रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 14] नई दिल्ली, मार्च 27—अप्रैल 2, 2016, शनिवार/चैत्र 7—चैत्र 13, 1938
No. 14] NEW DELHI, MARCH 27—APRIL 2, 2016, SATURDAY/CHAITRA 7—CHAITRA 13, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 18 मार्च, 2016

का.आ. 569.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्द्वारा, केंद्र सरकार भारत के दूतावास, मिंस्क में श्री अभिषेक, सहायक अनुभाग अधिकारी को दिनांक 18 मार्च, 2016 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2016]

प्रकाश चन्द, उप सचिव (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 18th March, 2016

S.O. 569.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Abhishek, ASO as Assistant Consular Officer in Embassy of India, Minsk to perform the Consular services with effect from 18th March, 2016.

[No. T-4330/01/2016]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 22 मार्च, 2016

का.आ. 570.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद्द्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास, बर्मिंघम में श्री अशोक रावत, सहायक अनुभाग अधिकारी को दिनांक 22 मार्च, 2016 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है ।

[सं. टी-4330/01/2014]

प्रकाश चन्द, उप सचिव (कोंसुलर)

New Delhi, the 22nd March, 2016

S.O. 570.—Statutory Order in pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Ashok Rawat, ASO as Assistant Consular Officer in Consulate General of India, Birmingham to perform the Consular services with effect from 22nd March, 2016.

[No. T-4330/01/2014]

PRAKASH CHAND, Dy. Secy. (Consular)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 22 मार्च, 2016

का.आ. 571.—केन्द्र सरकार, एतद्द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, झारखंड राज्य सरकार, गृह कारागार तथा आपदा प्रबंधन विभाग, रांची की अधिसूचना सं. 10/सीबीआई-607/2015-5454 दिनांक 03.09.2015 के माध्यम से प्राप्त सहमति से रांची जिले के सिकदिरी हाइडल प्रोजेक्ट की वित्तीय अनियमितताओं तथा उससे संबद्ध अपराधों में किए गए दुष्प्रेरणाओं और षडयंत्रों तथा उसी संव्यवहार में किए गए अन्य अपराधों की जांच करने के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का समस्त झारखंड राज्य में विस्तार करती है।

[फा. सं. 228/43/2015-एवीडी-II]

मो. नदीम, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 22nd March, 2016

S.O. 571.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Jharkhand , Home Prisons and Disaster Management Department, Ranchi vide Notification No.-10/C.B.I.-607/2015-5454 dated 03.09.2015, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Jharkhand for investigation of financial irregularities in Sikidiri Hydel Project in Ranchi District, the abetment and conspiracy in relation to or in connection with the said offences and any other offences in the aforesaid transaction.

[F. No. 228/43/2015-AVD-II]

Md. NADEEM, Under Secy.

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 23 मार्च, 2016

का.आ. 572.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 6 की उप-धारा (1) के खंड (ङ) के उप-खंड (झ) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्द्वारा, श्री अमिताभ कांत के स्थान पर श्री रमेश अभिषेक (आईएएस : बिहार : 1982), सचिव, औद्योगिक नीति एवं संवर्धन विभाग (डीआईपीपी) को अगले आदेशों तक भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) के निदेशक मंडल में निदेशक नामित करती है ।

[फा. सं. 24/27/2002-आईएफ-I (Vol-VI]

सौम्याजीत घोष, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 23rd March, 2016

S.O. 572.—In exercise of the powers conferred by sub-clause (i) of Clause (e) of sub-section (1) of Section 6 of the Export Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby nominates Sh. Ramesh Abhishek (IAS : BH : 1982), Secretary Department of Industrial Policy and Promotion (DIPP), as Director on the Board of Directors of Export Import Bank of India (EXIM Bank) vice Sh. Amitabh Kant until further orders.

[F. No. 24/27/2002-IF-I (Vol-VI)]

SOUMYAJIT GHOSH, Under Secy.

कोयला मंत्रालय

नई दिल्ली, 4 मार्च, 2016

का.आ. 573.—कोकिंग कोयला खान (राष्ट्रीयकरण) अधिनियम, 1972 की धारा 20 के उप-खण्ड (2) तथा कोयला खान (राष्ट्रीयकरण) अधिनियम, 1973 की धारा 17 के उप-खण्ड (1) के अंतर्गत शक्तियों का प्रयोग करते हुए, केन्द्र सरकार, एतद्द्वारा कोयला नियंत्रक, कोयला नियंत्रक संगठन, कोलकाता को उक्त अधिनियम के अंतर्गत भुगतान आयुक्त को सौंपे गए कार्यों का तत्काल प्रभाव से तथा अगले आदेशों तक निष्पादन करने के लिए नियुक्त करती है ।

[सं. 18/8/2015-एएसओ]

संजीब भट्टाचार्य, अवर सचिव

MINISTRY OF COAL

New Delhi, the 4th March, 2016

S.O. 573.—In exercise of the powers conferred under sub-section (2) of section 20 of the Coking Coal Mines (Nationalisation) Act, 1972 and sub-section (1) of section 17 of the Coal Mines (Nationalisation) Act, 1973 the Central Government hereby appoints the Coal Controller in Coal Controller's Organisation, Kolkata to perform the functions

assigned to the Commissioner of Payments under the said Acts with immediate effect and until further orders.

[No. 18/8/2015-ASO]

SANJIB BHATTACHARYA, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 11 मार्च, 2016

का.आ. 574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 10/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/71/1995-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 11th March, 2016

S.O. 574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 10 of 1997) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 11.03.2016.

[No. L-20012/71/1995-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 10/1997

Employer in relation to the management of Bhowra O.C.P. of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 20/01/2016

AWARD

By Order No. L-20012/71/1995-IR(C-1) dated 27/12/1996, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of management in denying the regularization as assistant foremen with effect from 25/01/1991 to Sh. Deosaran Singh is legal and justified? If not what relief the workman is entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates none appears subsequently on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 3/1995) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/446/1993-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 3 of 1995) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-20012/446/1993-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 3/1995

Employer in relation to the management of Pindra Colliery of M/s. CCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 24/02/2016

AWARD

By Order No. L-20012 /446/93-IR(CM-1) dated 28/12/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the action of the management of Pindra Colliery under Kuju Area, P.O-Kuju, Distt-Hazaribagh in not regularizing Shri M.L.Dutta as Pit Supervisor w.e.f. 01.02.1992 and not paying him, the difference of wages w.e.f. 21.11.1990 is justified? If not , to what relief is the workman entitled?"

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 16/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/16/1993-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 16 of 1994) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-20012/16/1993-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 16/1994

Employer in relation to the management of Godhur Colliery of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 26/02/2016

AWARD

By Order No. L-20012 /16/1993-IR(C-1) dated 16/02/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Godhur Colliery of M/s. B.C.C.L in not referring the workman Sri Mani Saw, Timber Mazdoor to Medical Board for assessment of his age is justified ? If not, to what relief is the workman entitled for?"

2. After receipt of the reference, both parties are noticed. Though they took steps for certain dated, Subsequently did not take any interest in the case by the parties. It is resumed that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 29/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/11/2014-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 29 of 2014) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-20012/11/2014-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 29/2014

Parties :

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri S.N. Ghosh, Advocate

For the Workman : Sri D.N. Banerjee, Advocate

State : Jharkhand Industry : Coal

Dated : 29/02/2016

AWARD

By order No. L-20012/11/2014/ IR (CM-I), dated 04/03/2014, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Kustore Colliery under M/s BCCL in not regularising Sri Ram Kumar Saw to the post of cap Lamp Fitter is fair and justified? To what relief the concerned workman are entitled to?"

2. This case is received from the Ministry of Labour on 18/03/2014. After receipt of the reference, both parties are noticed. The workman files their written statement on 20/05/2014 , and the management files their written statement-cum-rejoinder on 31.03.2015. Thereafter rejoinder filed by the workman. No witness adduced by both side, and no document marked by either side.

3. Short point to be decided in the case is whether the workman will get the designation of Cap Lamp Fitter or not.

4. During the hearing of the case, the workman representative submitted that he in the meantime got the scale of cap Lamp Fitter, which is category IV Scale. But he has not given the designation. But the workman unable to prove how he will entitle to the designation of the cap Lamp Fitter nor filed any document in his support. Therefore, giving the designation of Cap Lamp Fitter is not possible. Now the workman got his scale is sufficient for him.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 55/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/50/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 55 of 2013) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-20012/50/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 55/2013

Employer in relation to the management of Lodna Coke Plant of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri U.N. Lall, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 23/02/2016

AWARD

By order No. L-20012 /50/2013-IR(CM-1) dated 13/12/2013, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

" Whether the action of the Management of Lodna Coke Plant of M/s BCCL in fixing less wages after conversion from P.R. Wagon Loaders to T.R General Mazdoor-1 in respect of Smt. Chandra Patia Kamin and 10 others is fair and justified? To what relief the concerned workers are entitled to?"

Annexure

List of workmen

1. Smt. Chandrapati Kamin	2. Smt. Munni
3. Smt. Chhobi	4. Smt. Jirobi
5. Smt. Jamila Begam	6. Smt. Siya Devi
7. Smt. Kabutri	8. Smt. Shanti Kamin
9. Smt. Mehroon Bibi	10. Smt. Mangri Bhuini
11. Kaleshwar Pasi	

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the workman. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 74/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/91/1993-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 74 of 1994) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-20012/91/1993-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 74/1994

Employer in relation to the management of Giddi "C" Colliery of M/s. CCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 25/02/2016

AWARD

By order No. L-20012 /91/1993-IR(C-1) dated 16/03/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action taken against Shri Lal Mohamad to demot him from Dumper Operator, Grade-1 (B-Group) to Helper / Greaser and stopping two increment with cumulative effect by the management of M/s Central Coalfield Ltd. is legal and justified ?

If not, to what relief, the concerned workman is entitled.?"

2. After receipt of the reference, both parties are noticed. Though they took steps for certain dated, Subsequently did not take any interest in the case by the parties. It is resumed that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 79/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-20012/208/1993-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 580.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 79 of 1994) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-20012/208/1993-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/s 10 (1) (d) (2A) of I.D. Act, 1947

Reference No. 79/1994

Employer in relation to the management of Kusunda Area of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 26/02/2016

AWARD

By order No. L-20012 /208/1993-IR(C-1) dated 29/03/1994, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of M/s Bharat Coking Coal Ltd Kusunda Area in not referring the workman Sri Sukram Mahato. Drillman to the medical Board for determination of his age is justified ? If not, what relief is the concerned workman entitled to.?"

2. After receipt of the reference, both parties are noticed. Though they took steps for certain dated, Subsequently did not take any interest in the case . It is resumed that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 16 मार्च, 2016

का.आ. 581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जे.पी. एविएशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 10/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.03.2016 को प्राप्त हुआ था।

[सं. एल-11012/06/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 16th March, 2016

S.O. 581.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata (Ref. No. 10 of 2015) as shown in the Annexure in the Industiral Dispute between the employers in relation to the management of M/s. J.P. Aviation and their workmen, which was received by the Central Government on 16.03.2016.

[No. L-11012/06/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 10 of 2015

Parties:

Employers in relation to the management of M/s. J.P. Aviation Services Pvt. Ltd.

AND

Their workman

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management : Mr. S.R. Saha, Ld. Counsel for M/s. J.P. Aviation Services Pvt. Ltd.

Mr. Ranjan Ghosh, authorized representative for M/s. Spice Jet Airlines Ltd.

On behalf of the Workmen/union : None

State: West Bengal Industry: Civil Aviation

Dated: 1st March, 2016.

AWARD

By Order No.L-11012/06/2015-IR(CM-I) dated 26.02.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "(I) Whether the action of the Management of M/s. J.P. Aviation as contractor and M/s. Spice Jet as principal employer in not effecting the DA which is revised by the Central Government from time to time and also not paying the salary in time every month and also the continuous erroneous deduction of PF, and also not paying the stipulated rate of overtime for the extra hour of work and not addressing to the shortage of workmen in cargo operation etc. are justified? To what relief the workmen are entitled to?"

2. When the case is taken up today for hearing, none appears on behalf of the union though the managements, viz. M/s. J.P. Aviation Services Pvt. Ltd. and M/s. Spice Jet Airlines Ltd. are represented by its Ld. Counsel and authorized representative respectively. It appears from the record that the union is absent for 2(two) consecutive dates.

3. From the above facts and circumstances it may reasonably be presumed that the union is not interested to proceed with the case further. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above, instant reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 1st March, 2016.

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 21 मार्च, 2016

का.आ. 582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली मेट्रो रेल कारपोरेशन एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, दिल्ली के पंचाट (संदर्भ सं. 85/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.03.2016 को प्राप्त हुआ था।

[सं. एल-42011/69/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 21st March, 2016

S.O. 582.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 85/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Delhi Metro Rail Corporation and Others and their workmen, which was received by the Central Government on 18.03.2016.

[No. L-42011/69/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 85/2014

The General Secretary,
Delhi Karamchari Sangh,
780, Balli Maran Bhartiya
Mazdoor Sangh Delhi Pradesh,
5293 Ajmeri Gate,
Delhi-110006 ...Workman

Versus

1. The Manager,
   Delhi Metro Rail Corporation,
   8 Jantar Mantar,.
   New Delhi – 110 001

2. The Manager,
   M/s S.I. Services India Pvt. Ltd.
   B-36-37, 2nd Floor, IDC,
   M.G. Road, Sector 14
   Gurgaon-122 001 ...Management

AWARD

Central Government, vide letter No.L-42011/69/2014-IR(DU) dated 09.09.2014, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of S.I. Services India Pvt. Ltd. in terminating the services of Shri Shyam Kishore & 15 others is just, fair and legal? If not to what relief the workmen concerned are entitled to?"

2. In the reference order, the appropriate Government commanded the parties to the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute.

3. On receipt of the above reference, notice was sent to the claimant union as well as the management. Claimant union filed claim statement in respect of only 10 claimants out of 16. Thereafter, claimant union opted to abstain away from the proceedings. No claim statement was filed on behalf of the remaining 6 claimants. Thus, it is clear that the claimant union is not interested in adjudication of the reference on merits.

4. Since the claimant union has failed to file claim statement in respect of the remaining claimants despite grant of various opportunities, as such, this Tribunal is left with no other alternative, except to pass a 'No Dispute/ Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

March 16, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 22 मार्च, 2016

का.आ. 583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार म्युनिसिपल कारपोरेशन ऑफ दिल्ली साउथ शाहदरा जोन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 6/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-42012/72/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 583.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 6/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Municipal Corporation of Delhi, (South Shahdara Zone) and their workmen, which was received by the Central Government on 22/03/2016.

[No. L-42012/72/2013-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

I.D. No. 6/2014

Sh. Brij Pal S/o Sh. Shanu,
R/o 146, Old Anarkali , Krishna Nagar,
New Delhi -110051 ...Workman

Versus

Deputy Commissioner (South Shahdara Zone)
MCD, Karkardooma,
Delhi -110051 ...Management

Ex-parte AWARD

The Central Government in the Ministry of Labour Vide Letter No.L-42012/72/2013(IR(DU)) dated 21.01.2014 referred the following Industrial Dispute to CGIT-cum-Labour Court-II for adjudication :-

> "Whether the decision of Dy. Commission, Shahdra (South)Zone of MCD in treating the period of suspension of Sh. Brij Pal, the Section 498 A of IPC and debarring him from the consequential benefits of difference of salary, suspension allowance, ACP, difference of 6th pay commission etc. for that period is just, fair and legal when he is already acquitted by the Hon'ble High Court of Delhi against the charges above? If no what relief the workman concerned is entitled to ?"

Which was register as I.D No. 6/2014 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant filed claim statement on 29.05.2014. Through which he prayed as follows:-

a) Award compensation and damages of Rs. 10 lakhs in favour of the workman and against the respondent /management.

b) Set aside the office order vide reference no. 1430/SIO (P)/Vig./PC/2000/R 39 dt. 21.06.2011 of the respondent /management thereby direct the management to release the full salary as it was payable for the period from 2.4.2000 to 30 May 2011 to the workman alongwith all his

service benefits whatsoever of any nature for such period of times with interest as this Hon'ble Court deem fit and proper.

c) Direct the management /respondents to release the amount of VI pay commission of the workman /petitioner along with all arrears / outstanding whatsoever related to such VI Pay Commission with interest as this Hon'ble Court deem fit and proper.

d) Direct the respondents/management to consider the seniority, promotion and provide all increment, benefits of ACP Scheme for which he is entitled from the day of beginning and also direct the respondent/management to release all his arrears, due and service benefits which would accrue after considering all possibility in interest of justice.

e) Any other or further relief which this Hon'ble Court deem fit and proper may be granted in favour of workman /Petitioner and against the Respondents /Management.

Inspite of several opportunities management has not filed any reply. So case proceeded ex-parte against management and fixed 31.3.2015 for ex-parte evidence of workman.

On 31.3.2015 workman filed his affidavit. Which was tendered on same day.

Thereafter I have heard the arguments of Ld. A/R for the workman and fixed 14.1.2016 for order.

On 8.2.2016 Ld. A/R for the workman filed certified copy of Judgment of criminal appeal passed.

Workman in support of his case filed certified copies of Judgment of CRL.A. No. 176/2006 Roshni Versus state and CRL.A.Nos. 39-41/2006 Brijpal & Ors. Versus State of Delhi decided by Lordship of Delhi High Court on 17.02.2010.

Through which appeal of accused appellants Brijpal & Ors. has been allowed and conviction of Sh. Brij Pal has been set-aside and he has been acquitted u/s 498-A of IPC.

Against aforesaid judgment no evidence in rebuttal has been filed by respondent in the instant case . Although as per question of determination No.1 of reference order. Burden it lies on workman. Which has been proved by workman through his reliable and unrebutted evidence. So question of determination no.1 is liable to be decided in favour of workman and against management. Which is accordingly decided. Workman is entitled to relief as prayed by him in prayer clause (b) and to (d) of claim statement without interest.

Reference is also liable to be decided in favour of workman and against management which is accordingly decided and claim statement is partly allowed.

Ex-parte award is accordingly allowed and management is directed to comply the award within period of 2 months after expiry of period of available remedy against this award.

Dated:-07/3/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 22 मार्च, 2016

का.आ. 584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव अफसर, कैंटोनमेंट बोर्ड एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 29/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-13012/01/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 584.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 29/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Executive Officer, Cantonment Board and Others and their workmen, which was received by the Central Government on 22/03/2016.

[No. L-13012/01/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present : Shri Harbansh Kumar Saxena

I.D. No. 29/2015

Smt. Reeta Arya W/o
Sh. Rabindra Prakash Arya,
R/o Staff Quarters, Mallital,
Nainital-263002

Versus

Sh. Prakash BPO,
M/s. Prakash BPO,
Rep, Thr. Sh. Prakash Rakhari, Prop
G-24, Asthan Radheshyam Arcade,
Lakhanpur, Ram Nagar Nainital-244715

2. The Chief Executive Officer,
Cantonment Board,
Nainital-263002.

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No.L-13012/01/2015-IR(DU) dated 17.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication :-

> "Whether the termination/removal of Smt. Reeta Arya from the services of Cantt Board by M/s Prakash BPO is justified? If not, what steps the Cantonment Board, Nainital Should take and ensure that she is reinstated in her job with full back wages?

On 11.03.2015 reference was received in this tribunal. Which was register as I.D No. 29/15 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman to filed claim statement . Neither workman nor any person on his behalf has been appeared in the instant case nor claim statement filed.

In this background there is no option to this tribunal except to pass No Dispute Award because workman is not interested to file his claim statement.

On the basis of which none of the party can be directed to adduce its evidence. As it is case of no pleadings and evidence of claimant. So No dispute Award is liable to be passed.

No Dispute Award is accordingly passed.

Dated 28/02/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 22 मार्च, 2016

का.आ. 585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ सं. 113/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 585.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 113/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 22.03.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 113/2013

Shri Jitender Kumar,
S/o Shri Ram Kishan,
R/- A – 491, Gali No.16,
Gagan Vihar, Bhopra,
Ghaziabad, Uttar Pradesh ...Workman

Versus

1. The General Manager,
   Punjab National Bank,
   Head Office,
   7, Bhikaji Cama Palace,
   New Delhi 110 007

2. The Manager,
   Punjab National Bank,
   Branch Kaushambi,
   Ghaziabad, Uttar Pradesh ...Managements

AWARD

Present claim has been raised by Shri Jitender Kumar, the workman herein under provisions of sub-section 2 of Section 2A of the Industrial Disputes Act, 1947 (in short the Act), averring therein that he was employed as sweeper by Punjab National Bank (hereinafter referred to as the management) on 03.02.2000 and was posted at Extension Counter Dabur India Ltd. under Preet Vihar branch, which was later on merged with Kaushambi branch, of the management in March 2010. He was also performing duties of peon and record keeper and was require to work full time from 9 a.m. till closing hours and sometimes even upto 8 pm. He had an unblemished record. He was initially paid Rs.1800 till December 2001, Rs.2000.00 per month upto July 2004, Rs.2200.00 till September 2009, Rs.2600.00 till May 2011, Rs.2000.00 for June 2011 and Rs.1500 for July 2011. When he protested against reduction of his wages and for being paid less than the minimum wages, he was terminated on 03.08.2011, without any notice, memo, charge sheet nor any enquiry was conducted against him. He was deprived of all legal benefits like provident fund, ESI, paid leaves, overtime etc. Action of the management in

terminating services of the workman herein is illegal, malafide, unjustified and in violation of Section 25 F, G and H of the Act and against principles of natural justice. A prayer has been made that the management be directed to reinstate the claimant will all consequential benefits.

2. Demurral was made by the management claiming that the workman was not employed by the management on any substantive post but was merely a water/canteen boy, hence not covered under the definition of 'workman' as defined under Section 2(s) of the Act. Extension Counter at Dabur India Ltd. was merged with Kaushambi branch but there was no question of transferring the workman as he was doing some petty jobs, for which he was duly paid by the management. It is inherent in the engagement of a casual worker, he is engaged on day to day basis depending upon the availability of work. Since there was a water/canteen boy already working at Kaushambi branch, services of the workman herein was dispensed with. Copies of attendance register, vouchers, registers etc. submitted by the claimant herein are forged and fabricated. A complaint has also been registered against him with the police in this regard. Finally, a prayer has been made that since the claim does not merit any consideration, the same may be rejected.

3. Against this factual background, my learned predecessor on the basis of the above pleadings, framed the following issues vide a order dated 30.08.2013:

(i) Whether claimant had rendered continuous service of 240 days in preceding 12 months from the date of his termination?

(ii) Whether a casual employee has no right to seek reinstatement, as claimed by the bank?

(iii) Whether claimant is entitled to relief of reinstatement in service?

4. Thereafter, matter was listed for evidence of the claimant. More than a dozen opportunities was given to the claimant to adduce evidence, but neither the claimant nor any authorized representative on his behalf appeared before this Tribunal to adduce evidence in the matter. Thus, it is apparent that the claimant is no more interested in progress of the case on merits.

6. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 3, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 22 मार्च, 2016

का.आ. 586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ सं. 72/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-12012/2/2001-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 586.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 72/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Lucnow as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 22.03.2016.

[No. L-12012/2/2001-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT :

Rakesh Kumar, Presiding Officer

ID No. 72/2001

L-12012/2/2001-IR(B-II) dated 27.04.2001

BETWEEN :

Sri Sumitra Tewari w/o late Sri RA Tewari
2/566, Aliganj
Lucknow

AND

The Regional Manager
Central Bank of India
Regional Office, Hazratganj
Lucknow

AWARD

1. By order No. L-12012/2/2001-IR(B-II) dated 27.04.2001 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Smt. Sumitra Tiwari W/o late Sri Ram Akshayver Teweari, Aliganj, Lucknow and the Regional Manager, Central Bank of India, Regional Office, Hazratganj, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF CENTRAL BANK OF INDIA IN AWARDING PUNISHMENT OF DISMISSAL UPON SRI RAM AKSHAYVER TEWARI VIDE ORDER DATED 21.05.1994 AND ALSO REJECTION OF APPEAL VIDE ORDER DATED 08.06.1996 WERE LEGAL AND JUSTIFIED? IF NOT, WHAT RELIEF THE WIDOW OF THE WORKMAN IS ENTITLED TO ?"

3. The then Hon'ble Presiding Officer, CGIT, vide order dated 27.02.2002 has asked the Government to substitute the name of Smt. Sumitra Devi in place of late Sri Ram Akshayver Tewari and to amend the reference order suitably. Consequently, Central Government issued a corrigendum and amendment was incorporated accordingly.

4. As per the claim statement wife of deceased workman has submitted in brief, that her husband was working as Clerk at Faizabad branch of the bank and he was promoted from Sub-Staff to Clerk, and posted to work at Faizabad and thereafter transferred to Lucknow. It has been alleged in the claim statement that due to rivalry of employees union, false complaints were sent against the workman and his associates, the union exerted pressure on the bank, and the workman was falsely implicated and the charge sheet was served in connivance with the officials of management.

5. The applicant has further stated that another member of the union Sri M.P. Mishra, Clerk belonged to the said union, he was traped by the union and at behast of the opposite party, was charge- sheeted and punished in another case, has been exonerated from the charges, and real guilty employees have not been punished by the opposite party despite several efforts made by other unions. It has been stated that the workman late Sri R.A. Tewari filed appeal before the management and the mercy appeal also made to the management, several reminders were sent but could not get any fruitful result; he was dismissed from service without any notice.

6. As per the claim statement following 3 charges were framed against him;

1. Mr. R.A.Tewari unauthorisedly opened HSS A/c 24383 fvg. Sri Bholanath Tewari in the ledger,
2. He inflated the balance twice,
3. He fraudulently withdrew Rs.9300/- from the said A/c by forgiving the signatures of A/C holder.

7. So called proceeding regarding the aforesaid charges have been mentioned in brief in the claim statement. It has further been asserted that the request of the workman's representative to obtain opinion of the expert was not accepted by the management, the lady applicant has pleaded that her husband did not get any relief despite his appeal and mercy appeal etc., conciliation proceeding were initiated before ALC (C), Lucknow and during conciliation proceedings the workman expired, thereafter widow and legal heir of the deceased employee but the opposite party did not prefer to reply before the ALC (C) Lucknow. With the above pleadings the applicant has requested to treat her husband in service till the date of his death and for payment of all wages etc. to the lady applicant. Request for appointment on compassionate ground has also been made by the widow.

8. The applicant has filed certain documents as per the list 5 dated 29.11.2001.

9. The management has filed objection dated 16.08.2001 wherein the main allegations of the claim statement have been denied. The opposite party has stated that the workman is reported to have been died on 29.11.1999, the claim cannot be filed by his wife, enquiry proceedings to which she was not party cannot be challenged by her, neither has she mentioned that opportunity was not provided to her husband during the disciplinary enquiry, her version could not be accepted by this court at this later stage.

10. It is submitted that the charge sheet No.RO/PRS/DAD/92-93/10/295 dated 17.09.1992 was issued against the claimant's husband for his gross misconduct. A regular departmental enquiry was held and the claimant was given all opportunities to defend his case before the enquiry officer. After the conclusion of the departmental enquiry, the enquiry officer submitted his findings dated 10.02.1994 to the disciplinary authority and found that the charges levelled against the claimant's husband are proved beyond all reasonable doubts. Claimant's husband was given opportunity to "Say" against the findings of the enquiry officer by the disciplinary authority. The claimant's husband had chosen to exercise this right and offered his comments to the disciplinary authority against the findings of the enquiry officer. In turn the disciplinary authority after considering the entire record of the enquiry containing enquiry proceedings, exhibits, arguments put forth by both the parties and submissions made by the claimant's husband found that the charges levelled against Mr.Tewari vide chare sheet No. RO/PRS/DAD/92-93/10/295 dated 17.09.1992 as fully proved against him. Therefore, the disciplinary authority vide his order dated 13.04.1994 proposed the punishment of "Dismissal from service without notice" in terms of Clause 19.6 (a) of Bipartite Settlement dated 19.10.1966, as amended upto-date. The claimant's husband was also given an opportunity to make his submissions against the proposed punishment by the disciplinary authority by offering him personal hearing which took place on 17.05.1994 at 3 P.M. before the disciplinary authority. After considering all aspects of the matter, the disciplinary authority vides his order No. RO/PRS/DA/12/94-95/77 dated 21.05.1994 awarded the

punishment of "Dismissal from service without notice" to the claimant's husband.

11. It is further submitted that claimant's husband has preferred his appeal before Appellate Authority, who also gave him an opportunity of hearing on 07.06.1995 at Zonal Office, Lucknow. The Appellate Authority vide order No. ZO/PRS/VIG/AGM/AA/95-96/240 dated 08.06.1995 confirmed the order of disciplinary authority after considering all facts, records and the submissions made by the claimant's husband in this regard. It is further submitted that the claimant was well informed that there is no provision of Mercy appeal in Bipartite Settlement. It is also submitted that at this stage this matter was also raised by the union of claimant's husband in the joint discussions, there also the management has informed the same to the union also.

12. The management has further asserted that claimant has falsely, concocted and frivolous petition has filed with ulterior motive; and it being untenable, is liable to be rejected. Along with objection photo copies of several documents including enquiry report have been filed by the bank.

13. In reply to the objection submitted by the opposite party rejoinder has also been filed by the lady applicant, reiterating the pleas taken in the claim statement. The applicant has asserted that the domestic enquiry is void and is based on false story to terminate the services of the workman prejudiciously.

14. After completion of the pleadings of the parties, following preliminary issues were framed in the presence of the parties vide order dated 22.04.2002:

(i) क्या विभागीय जांच उचित एवं न्यायसंगत थी अथवा नहीं ? तथा

(i) जांच अधिकारी के निष्कर्ष दुराग्रहपूर्ण (perverse) हैं अथवा नहीं ?

The parties were called upon to adduce their evidence on preliminary issues. The parties filed documents in support of their respective case; but did not adduce any oral evidence. However, both the parties forwarded oral arguments on preliminary issues.

15. After hearing the parties' authorized representatives of the parties and going through entire material available on record, following orders were passed on preliminary issues vide order dated 12.03.2015:

"It is evident from perusal of the documents filed as well the court file, that there was no undue haste during the enquiry proceedings, management witness were examined in the knowledge of the workman, he was provided opportunity to cross examine in detail the management witnesses, moreover, sufficient opportunity was also given to adduce defence evidence. Hence, while appreciating the arguments advanced by the learned A/R before this Tribunal, since there is no cogent evidence and reasonable ground in the record to agree with the view advanced on behalf of the lady applicant, it can not be inferred that at this stage, that the impugned enquiry was perverse or unfair. Therefore, preliminary issues framed by the then Presiding Officer on 22.04.2002 are decided against the applicant. Put up on 28.04.2015 for final argument on the point of quantum of punishment."

16. Heard, parties at length and perused entire material available on record.

17. It has been contended by the authorized representative of the workman that the order of this Tribunal on preliminary issues is wrong as he had been denied the opportunity of proper defence during the course of domestic inquiry, by non-supply of documents and preset of mind of the Disciplinary Authority in the inquiry. It was also argued that the Inquiry Officer had been appointed with the issuance of charge sheet, even before submission of reply to charge sheet, which shows that the management was with preset with intention to penalize the workman through an unfair domestic inquiry.

18. Per contra, it was argued for management that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment. It was submitted that the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is excessively harsh and shocking to the consciousness. It has further been argued that in the instant case the workman was given charge sheet for committing gross misconduct i.e. embezzlement of the Bank's money; and was penalized with the punishment of dismissal, after conducting a thorough inquiry and this Tribunal vide its order dated 12.03.2015 has held that the domestic inquiry was conducted in accordance with the principles of natural justice and the workman was afforded all reasonable opportunity to defend himself"; hence there is no scope for this Tribunal to interfere with the quantum of punishment order as the same is well proportionate order, as the workman was punished for proved gross misconduct i.e. embezzlement. It has been submitted that the embezzlement of Bank's money speaks ill of the honesty and integrity of the workman concerned. This is definitely an act prejudicial to the interest of the Bank. Such employees cannot be kept on the rolls of the Bank. It has relied on Bank of India vs Vishwa Mohan (1998) Lab IC 2514.

The bank management has further submitted that the Bank being a financial institution dealing with the

public money, and the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation or embezzlement constitute misconduct of serious nature warranting penalty of removal/dismissal. As the charges levelled against the workman were of serious/grave in nature, which were duly proved in the inquiry, therefore, the action of the management is justified. It has been argued by the bank that the aforesaid act of the workman has shaken the confidence of the bank in him and he is not fit to be kept in the services of the Bank, therefore deserves no interference into the quantum of punishment by this Tribunal. It has relied on Municipal Committee, Bandugarh vs. Kishan Baha and others, 1996 Lab IC 1050.

19. I have given my thoughtful consideration to the rival contentions of the authorized representatives of the parties and perused case laws relied on by them.

20. In the instant case the workman was charge sheeted with the allegation of 'gross misconduct of embezzlement by making fictitious entries and withdrawal of money by putting forged signatures of the customer. The domestic inquiry and its findings were upheld by this Tribunal vide order dated 12.03.2015, holding that the domestic inquiry was conducted in accordance with the principles of natural justice; and the workman was afforded all reasonable opportunity to defend himself. Hence, after decision on the preliminary issues in the favour of the management, the workman has pleaded that the punishment imposed upon her husband is disproportionate and this Tribunal should interfere into it within the provisions provided under Section 11 A of the Industrial Disputes Act, 1947.

21. Hon'ble Apex Court in B.C. Chayurvedi v. Union of India, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

> "The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

In DG, RPF vs. Sai Babu (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

> "6……. Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department/establishment which the delinquent person concerned works."

In United Commercial Bank vs. P.C. Kakkar (2003) 4 SCC 364 Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

> "11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision.
>
> 12. To put it differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/ tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In Union of India vs. S.S. Ahluwalia (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

> "8……. The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In State of Meghalaya v. Mecken Singh N. Marak (2008) 7 SCC 580 Hon'ble Supreme Court stated that:

> "The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

22. Hon'ble Apex Court in Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulbhia M. Lad (2010) 2 SCC (L&S) 101 has observed that

> "The legal position is fairly well settled that while exercising the power of judicial review, the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent, responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion on reappraisal of facts.

23. In the instant case the workman, was working as Clerk in Faizabad branch of the bank and during his said posting he committed various gross misconducts which included fictitious entries and withdrawl of money by putting forged signatures of a customer. The management through evidence proved before the domestic inquiry that the committed above irregularities and the domestic inquiry conducted by the management was upheld by this Tribunal vide its order dated 12.03.2015.

The Bank management has argued that the embezzlement of the Bank's money speaks ill of the honesty and integrity of the workman concerned. This is definitely an act prejudicial to the interest of the Bank, which leads to loss of faith in the workman. In Air India Corporation Bombay vs. V.A. Ravellow 1972 (25) FLR 319 (SC) it has been observed that:

> "Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity, and in a case of loss of confidence, reinstatement cannot be directed."

In Knhaiyalal Agarwal and others vs. Factory Manager, Gwaliar Sugar Co. Ltd. AIR 2001 SC 3645 Hon'ble Apex court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that:

> "(i) the workman is holding the position of trust and confidence; (ii) by abusing such position, be commits act which results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing the inconvenient to the employee, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trust worthiness or reliability of the employee, must be alleged and proved."

In State Bank of India and another v. Bela Bagchi and others AIR 2005 SC 3272, repelled the contention that even if by the misconduct of the employee the employer does not suffer any financial loss, he can be removed from service in a case of loss of confidence. Further in A.P. SRTC v. Raghuda Shiva Sankar Prasad AIR 2007 SC 152 Hon'ble Apex court has observed that in case of theft, the quantum of theft is not import and what is important is the loss of confidence of employer in employee.

24. Thus, the Bank being a financial institution dealing with the public money, the employees of the Bank are required to exhibit utmost honesty and integrity in day to day transaction/functioning. The act of dishonesty or fraud or misappropriation or embezzlement lowers down the reputation of Bank in public. The public loose their confidence in Bank, which affects Bank's business and finally the national economy.

25. Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

> "7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

26. In the instant case the charge of gross misconduct/ embezzlement of the Bank's money was found to be proved and principles of natural justice were properly observed

while conducting the departmental inquiry; and also the findings of the Inquiry Officer were not found to be perverse. Therefore, under the facts and circumstances and considering the laws, there is no justification in interfering with the order of punishment imposed upon the workman by the Disciplinary Authority for proved gross misconduct of 'embezzlement'. Accordingly, the widow of the workman is not entitled to any relief.

27. Award as above.

LUCKNOW
18th January, 2016.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 22 मार्च, 2016

का.आ. 587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय मेरीटाइम यूनिवर्सिटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 80/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 587.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Maritime University and their workmen, received by the Central Government on 22.03.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 14th January, 2016

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 80/2014

[In the matter of the dispute for adjudication under Sub-Section 2A of Section-10 of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010). between the Management of Ministry of Surface Transport and Indian Maritime University, Chennai and their workman]

BETWEEN:

Sri J. Ravichandran : 1st Party/Petitioner

AND

1. The Secretary Ministry of Surface Transport Government of India New Delhi-110001 : 2nd Party/1st Respondent
2. The Management of Indian Maritime University Uthandi Chennai-600119 : 2nd Party/2nd Respondent

Appearance:

For the 1st Party/ Petitioner : Sri S. Raghupati, Advocate

For the 2nd Party/ 1st & 2nd Management : Sri M.R. Raghavan, Advocate

AWARD

This is an Industrial Dispute taken on file under Section 2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010).

1. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner joined the service of the Respondent as Driver on 01.09.2008. He was doing work of permanent nature. He has been discharging his duties to the satisfaction of his superiors and to the best of his abilities. The petitioner was illegally retrenched from service on 23.12.2013. The Respondent has forcefully obtained a letter of apology from the petitioner before relieving him from service. The petitioner was no issued with any statutory notice under Section-9A of the Industrial Disputes Act. His retrenchment is in contravention of the standing orders also. The petitioner was victimized in view of his Trade Union activities. The petitioner was not issued any notice and his retrenchment is in violation of Section-25F of the ID Act. The petitioner has been in continuous and uninterrupted service for more than 480 days within a period of 24 months so he is entitled to be made permanent under Section-3 of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workman) Act, 1981. The petitioner has filed a petition before the Asstt. Labour commissioner (Central). The Respondent did not cooperate with the conciliation proceedings and a failure report was recorded by the Asstt. Labour Commissioner. The petitioner has filed this petition in the circumstances. An order may be passed directing the Respondents to reinstate the petitioner in service with back wages, continuity of service and other attendant benefits.

2. The First Respondent has filed Counter Statement contending as below:

The First Respondent is not an industry as contemplated under the provisions of ID Act. There is no employer employee relationship between the petitioner and the First Respondent. The petitioner was neither employed, nor terminated by the First Respondent. The First Respondent has been improperly impleaded as a party to the proceedings.

3. The Second respondent has filed Counter Statement contending as below:

The petitioner was appointed by the erstwhile National Maritime Academy as a Driver on contract basis for a period of one year by Memorandum dated 06.10.2008. When the Indian Maritime University Act was passed, the employees of the National Maritime Academy were transferred to the Indian Maritime University. The petitioner's service also stood transferred to Indian maritime University, the Second Respondent. The service of the petitioner was extended periodically by the Second Respondent every six months. His last extension was on 08.08.2013 for a period of six months. On 23.12.2013 his services were terminated on account of misbehavior with his superior. The challenge to the order of termination is not sustainable in law. The contract of employment with the petitioner provided that his appointment was temporary and would not bestow on him any claim for permanent appointment. The contract provided for termination without assigning any reason. The Second Respondent terminated service of the petitioner by virtue of the powers vested under contract of employment. The petitioner did not possess the necessary qualification to be appointed for the post. The allegation that an apology was obtained forcefully without conducting a domestic enquiry is misconceived. There was no necessity to conduct an enquiry when the petitioner himself has admitted the act of indiscipline. The allegation that there is violation of Section-9A of the ID Act in terminating the service of the petitioner is not correct. The allegation that the petitioner was victimized, he being a Trade Union activist also is not correct. The petitioner is not entitled to any relief.

4. The petitioner has filed rejoinder denying the allegations in the Counter Statements.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W20.

6. **The point for consideration is :**

"Whether the petitioner is entitled to be reinstated in service as claimed"?

The Point

7. The petitioner has been working as Driver in the service of the Second Respondent on 01.09.2008. He has been terminated from service on 23.12.2013. The petition is filed challenging this order of termination and claiming reinstatement in service.

8. The claim of the petitioner is that he has been doing work of a permanent nature, that he has completed work of more than 480 days in a period of 24 months and is entitled to the benefit of Section-3 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 that in any case his termination is in violation of Section-9A, Section-33 and Section-25F of the ID Act and also the employment standing orders of the Second Respondent.

9. The First Respondent in the petition is the Ministry of Surface Transport. The petitioner has not stated in the Claim Statement how the First Respondent is liable for the claim made. It is the case of the First Respondent that there is no employer employee relationship between it and the petitioner. The petitioner seems to have been employed by the Second Respondent which has nothing to do with the First Respondent. The petitioner has not established in evidence that the First Respondent has got anything to do with the claim. The First Respondent seems to have been made a party to the petition without any basis.

10. It is admitted by the Second Respondent that the petitioner had started to work with it on 06.10.2008 and continued in the service of the Second Respondent until 23.12.2013. Initially the appointment was for a period of one year. Ext.W1 is the first appointment order served on the petitioner. Though the petitioner had started to work with the Second Respondent on 01.09.2008 the appointment order is on 06.10.2008 only. Exts.W2 to Exts.W7 and Exts.W9 to Exts.W13 are the orders extending service of the petitioner during every six months. Ext.W8 is the order allotting staff quarters to the petitioner. Ext.W17 is the order by which the petitioner was terminated from service on 23.12.2013.

11. The main contention that is raised by the Second Respondent in justification of the termination of the petitioner is that he was appointed on contract basis and therefore his termination is not retrenchment as it comes under the exemption of Section-2(oo)(bb) of the Industrial Disputes Act. The Second Respondent relies upon the conditions in Ext.W1 which states that the appointment is for a period of one year, that it is on contract basis on consolidated salary and that the appointment is terminable at 24 hours notice without assigning any reasons. However, it is difficult to accept Ext.W1 as a contract of employment. It is only an appointment order putting certain conditions for service. When the Second Respondent is pleading that it is entitled to the exemption, it is upon it to prove the same. The Second Respondent has not produced any document to show that there was a specific contract with the petitioner and Section-2(oo)(bb) is attracted in view of this and termination of the petitioner will not be retrenchment.

12. It could be seen even from the counter statement of the Second Respondent that the petitioner was terminated from service on a fine morning even before the six month period of service as extended by Ext.W13 was completed. What is stated by the Second Respondent in the Counter Statement is that the petitioner has misbehaved with his superior and he was terminated on account of this. However, even as admitted by the Second Respondent no enquiry was conducted regarding the alleged misbehavior. The petitioner was not served with a Charge Memo and he was not given opportunity to defend the allegation, if any against him. Though it is stated that his termination was on account of misbehavior the Second Respondent takes shelter under Ext.W1 to justify the termination. However, as stated the termination will not come under the exemption pleaded by the Second Respondent and is not proper or legal.

13. Though the petitioner has claimed right of confirmation in service under Section-3 of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, it is not shown by him that he is entitled to the benefit of this section. In the petition the petitioner has claimed the relief of reinstatement in service. However, the petitioner has been working only as a temporary driver. This is why he was appointed initially for one year and the period of service extended every six months until he was terminated from service. There is no case for the petitioner that he was working on a sanctioned post. He was not recruited considering his qualification in accordance with the Recruitment Rules. In the circumstances, he is not entitled to the relief of reinstatement.

14. It is clear that termination of the petitioner is in violation of Section-25F of the ID Act. He was not served with any notice nor was he given any compensation. Though not entitled to reinstatement, in such circumstances he is entitled to compensation. The petitioner had been in the service of the Second respondent from 01.09.2008 to 23.12.2013. He had worked with the Second Respondent for more than 5 years. Considering this the compensation payable to the petitioner is fixed as Rs. 2.00 lakhs.

15. In the result the second Respondent is directed to pay the petitioner Rs. 2.00 lakhs as compensation, within the month of publication of the award. In default of payment within the prescribed time, it will carry interest @ 7.5% per annum from the date of the award.

An award is passed accordingly

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 14th January, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner	:	WW1, Sri J. Ravichandran
For the 2nd Party /1st & 2nd Management	:	None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	06.10.2008	Appointment Order
Ext.W2	12.10.2009	Extension of Service
Ext.W3	19.10.2009	Extension of Service
Ext.W4	11.02.2010	Extension of Service
Ext.W5	25.02.1010	Enhancement of Increment
Ext.W6	11.08.2010	Extension of Service
Ext.W7	28.02.2011	Extension of Service
Ext.W8	13.05.2011	Office Memorandum for Allotment of Staff Quarters
Ext.W9	19.08.2011	Extension of Service
Ext.W10	22.03.2012	Extension of Service
Ext.W11	13.09.2012	Extension of Service
Ext.W12	15.02.2013	Office Order for Extension of Service
Ext.W13	08.08.2013	Extension of Service
Ext.W14	June 2011 To April 2013	Attendance Register from month of June 2011 to April 2013
Ext.W15	Nov. 2013	Pay-Slip for the month of October & November, 2013
Ext.W16	23.12.2013	Letter of Petitioner
Ext.W17	23.12.2013	Termination Order issued by the 2nd Respondent
Ext.W18	23.09.2014	Failure Report CLC, Chennai
Ext.W19	-	Driving License of the Petitioner
Ext.W20	-	Identity Card issued by the 2nd Respondent

On the Respondent's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 22 मार्च, 2016

का.आ. 588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 24/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 22.03.2016.

[No. L-39025/01/2010-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thesday, the 23rd February, 2016

Present :

K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 24/2015

BETWEEN :

Sri C. Sekar : 1st Party/Petitioner

AND

The Senior Regional Manager : 2nd Party/Respondent
Central Bank of India
Regional Office
No. 48/49, Montieth Road
Egmore
Chennai-600008

Appearance :

For the 1st Party/ Petitioner : M/s. Balan Haridas, Advocates

For the 2nd Party/ Respondent : Sri S. Ravindran, Authorized Representative

AWARD

This is an Industrial Dispute taken on file under Section-2(A)(2)(1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010).

1. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had joined the service of the Respondent, a nationalized bank, on 5th July, 1982 as a Clerk. Since then the petitioner had been working at various branches of the Respondent Bank at Chennai, the last branch in which he worked being Teynampet as Head Cashier-II. The Regional Manager of the Respondent bank suspended the petitioner from service by order dated 22.12.2009 making frivolous and past closed allegations of misconduct. After two and half months of suspension the Respondent served a memo antedated 31.12.2009 repeating the same allegations of misconduct, asking for explanation. The petitioner submitted his explanation on 01.03.2010. On 01.07.2010 a charge sheet antedated 16.06.2010 was served on the petitioner. Based on the charge sheet the Respondent ordered domestic enquiry. The domestic enquiry conducted was not in accordance with the principles of natural justice. Fearing for service the petitioner raised industrial dispute before the Assistant Labour Commissioner on 06.12.2010. Regardless of the conciliation proceedings before the Assistant Labour Commissioner the Respondent proceeded with the enquiry proceedings in violation of the principles of natural justice. The Enquiry Officer found the charges partially proved and submitted his report. The Respondent who is Disciplinary Authority overturned the Enquiry Officer's findings and held that the charge which the Enquiry Officer found not proved and another charge which he found partially proved are also proved. Immediately after the Asstt. Labour Commissioner sent failure report the Respondent issued Show Cause Memo to the petitioner proposing penalty of dismissal from service. The petitioner filed a reply to the Show Cause Memo. Without considering the reply the Respondent issued order on 08.10.2013 dismissing the petitioner from service. The petitioner preferred an appeal before the Appellate Authority. However, the Appellate Authority upheld the order of the Disciplinary Authority. The petitioner has not committed any misconduct as alleged. An order may be passed holding that dismissal of the petitioner from service is not justified and also directing the Respondent to reinstate the petitioner in service with backwages, continuity of service and other attendant benefits.

2. The Respondent has filed Counter Statement contending as below:

The petitioner was an employee of the Respondent Bank in Clerical Cadre from 05.07.1982. He lastly worked at Teynampet branch of the Respondent as Head Cashier-II in Clerical Cadre. The Respondent suspended the petitioner from service on 22.12.2009 for committing serious misconduct. Thereafter a memo was sent to his residential address available with the bank. The memo was returned un-served with the endorsement that the petitioner has left the place. Two officials from Teynampet branch were deputed to serve the memo at the address.

However, the petitioner had shifted from the premises. His changed address was informed to the bank only on 10.06.2010 and the memo could be served only subsequently. The petitioner did not submit any explanation to the memo issued by the Respondent. Charge Sheet was served on him on 01.07.2010 and domestic enquiry was conducted against him. The petitioner was represented by the Defence Representative in the enquiry proceedings. It is incorrect to state that the enquiry was conducted against the principles of natural justice. The allegation otherwise in the Claim Statement is not correct. The Enquiry Officer entered a finding based on the evidence placed before him that two out of the seven charges raised against the petitioner are not proved. The petitioner was running finance firms without obtaining permission from the Bank. He was cheating depositors by not repaying deposit amount. The petitioner had transactions amounting to Rs. 37.85 lakhs between August 2007 to January 2009 through his account, though his salary for the period was only Rs. 4.46 lakhs. Cheques issued by him to the depositors of his finance company were returned due to insufficiency of funds. The petitioner had issued Letter of Irrevocable Guarantee of Rs. 18.00 crores, Rs. 15.00 crores and Rs. 15.00 crores respectively while working as Head Cashier, without any authority. Thus the petitioner has committed serious misconduct while in service. The petitioner is not entitled to any relief.

3. In the additional counter Statement the Respondent has stated that in case the enquiry is found vitiated it is reserving the right to lead evidence on the merits of the charges before this Tribunal.

4. An additional Claim Statement has been filed, reiterating the contentions in the first Claim Statement.

5. Since the petitioner has raised the contention that the domestic enquiry was not conducted in accordance with the principles of natural justice, this issue was considered as a Preliminary Issue. This Tribunal has entered a finding in favour of the petitioner on the issue. The Respondent having stated in the Counter Statement that it may be permitted to adduce evidence before this Tribunal on the merits of the case, in case of a finding in favour of the petitioner, the Respondent was allowed to adduce evidence. The petitioner has adduced evidence to rebut the evidence of the Respondent also.

6. The evidence in the case consists of oral evidence of MW1 and WW1 and documents marked as Ext.M1 to Ext.M42 and Ext.W1 to Ext.W56.

7. The points for consideration are:

(i) Whether the action of the Respondent in dismissing the petitioner from service is justified?

(ii) What, if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner was working in the Respondent Bank as a Clerk from 1982. While he was working as Head Cashier -II at Teynampet Branch he was dismissed from service on the charges of misconduct, after conducting a domestic enquiry. The petitioner has raised the dispute before the Assistant Labour Commissioner, Chennai. Before reference was received by this Tribunal consequent to the failure report of the Asstt. Labour Commissioner the petitioner has filed the petition before this Tribunal directly, seeking the relief of reinstatement in service with consequent benefits.

9. Even though the Claim and Counter Statement are elaborative these do not specifically mention what are the charges leveled against the petitioner. Out of the 7 charges, the Enquiry Officer has found two not proved. The counsel for the Respondent has stated at the time of his argument that he is not pressing charges 2 and 7. So only the remaining charges need be considered.

10. What is the first charge against the petitioner? The charge sheet is marked as Ext.M1. The first charge states that the petitioner has engaged in finance companies under the name and style (i) Yogam Finance and Investments (P) Ltd. (ii) Everbright Enterprises and (iii) Swati Investments. It is stated that investments in FDs have been made by several individuals in this Finance Companies and the deposits were not repaid to the depositors on due dates and some of them have filed suits and obtained decrees against the petitioner. It is stated in the charge that the petitioner has engaged in finance business outside his scope of duties without obtaining written permission from the Bank and he has committed the misconduct covered by Clause-5(a) of the circular on Disciplinary Action Procedure.

11. MW1 has given evidence on behalf of the bank with reference to the documents produced by it. This witness has stated with reference to Ext.M6 to Ext.M18 that the petitioner was engaged in financial business outside the scope of his duties without obtaining permission from the Bank. Referring to Charge No. 1, the petitioner has stated in his Claim Statement that he has got nothing to do with the three companies by name Yogam Finance and Investments (P) Ltd., Everbright Enterprises and Swati Investments. He has stated that the Articles of Association and Memorandum of Association of Yogam Finance and Investments, if produced would show the names of the Directors of the Company but the Respondent has failed to produce the said document. He has stated that he does not know about Bright Enterprises. He further stated that Swati Investments is a partnership firm in which his uncle and others are partners.

12. Ext.M6 is one of the documents relied upon by the Respondent to substantiate the first charge. This is a notice sent to the Respondent Bank by a lawyer. It could be seen

from this that earlier also another notice has been sent by the lawyer and Ext.M6 is by way of assertion of the facts stated in the earlier notice. The notice states that the petitioner has accepted deposits from his client and issued Fixed Deposit Receipts in which the petitioner has signed as Director of the Finance Company by name M/s Yogam Finance and Investments (P) Ltd. It is further revealed from the notice that suit was filed against the petuitioenr and his wife for recovery of the amount covered by the Fixed Deposit Receipt as the petitioner failed to pay the amount covered by the receipts. Ext.M8 and Ext.M9 are photocopies of Fixed Deposit Receipts in the name of Yogam Finance and Investments (P) Ltd. It is the case of the Respondent that these deposit receipts were issued by the petitioner to Venkatraman the person referred to as the client in Ext.M6 notice and his daughter. When these documents were put to the petitioner during his cross-examination he denied to have signed the Deposit Receipts. However he has admitted that Ext.M10 and Ext.M11 are copies of the cheques that were issued by him to Venkataraman. Ext.M10 and Ext.M11 are for Rs. 1.00 lakh each. The petitioner had admitted during his cross-examination that Exts.M10 and Ext.M11 cheques were returned dishonoured due to insufficiency of funds. The same Venkatraman alongwith his daughter to whom Ext.M10 and Ext.M11 were issued had filed OS 22/2002 before the Subordinate Judge at Poonamallee and obtained a decree for recovery of a sum of more than Rs.2.00 lakhs. Ext.M12 is the copy of the decree. The first defendant in the case is Yogam Finance and Investments (P) Ltd represented by its Director, C. Sekar. The second defendant in the case is Sri C. Sekar working in Central Bank of India, the petitioner. It is beyond doubt that the person referred to as defendant 1 and defendant 2 is the same, the petitioner. The third defendant in the case is the wife of the petitioner. There is no case for the petitioner that he is not the person referred to as Defendants 1 and 2 in the decree. He has stated during his cross-examinations that he had not filed any application to set aside the decree in OS 22/2002. The decree holders had filed execution petition to recover the amount. Ext.M13 is the letter from the Regional Office to Mogappair branch in which the petitioner was working regarding attachment of salary of the petitioner. Ext.M13 seems to have been written by the Regional Office based on Ext.M14 a letter received at the Regional Office from the Zonal Office in which the Execution Petition filed by Venkataraman is also referred to. Ext.M17 is the copy of the summons issued to the petitioner through the Branch Manager. Ext.M18 is the attachment order in another suit OS 4968 of 2002 filed by one Chandran. This is also an order attaching the salary of the petitioner. Though the petitioner has denied his signature in the FDRs of Yogam Finance and Investments marked as Ext.M8 and Ext.M9, Ext.M10 and Ext.M11 which are admitted by the petitioner when considered alongwith Ext.M12 would show that signatures in Edxt.M8 and Ext.M9 also should be that of the petitioner. For one thing the petitioner is described in OS 22/2002 as the Director of Yogam Finance and Investments Pvt. Ltd. The argument that merely because of this description the petitioner cannot be said to be the Director would not hold good. The petitioner has remained ex-parte in OS 22/2002. That means he has submitted for a decree in the suit that was filed by him in his capacity as the Director of Yogam Finance and Investments Pvt. Ltd. He has not cared to challenge the decree but has allowed the decree holders to execute the decree and recover the amount from his salary. If he has nothing to do with Yogam Finance and Investments P Ltd. this would not have been the case. The admitted signatures in Ext.M10 and Ext.M11 are similar to the signatures as that of the Director in Ext.M8 and Ext.M9. It is for the petitioner to explain why he issued Ext.M10 and Ext.M11 to Venkataraman if those were not on account of the FDRs issued by Yogam Finance and Investments Pvt. Ltd.

13. The petitioner has stated in his Proof Affidavit that the Articles of Association and Memorandum of Association of the Companies in question Act were deliberately withheld by the Respondent. At the time of his cross-examination a copy of Articles of Association of Yogam Finance and investments Pvt. Ltd. received from the Ministry of Corporate Affairs was put to the petitioner and he has admitted that the last page of the document contains his name and signature. He is shown as the Chairperson among the subscribers and the equity shares taken by him is 100 while that of the others is only 10 each. As already referred to, the case of the petitioner in the Claim Statement is one of total denial to the effect that he has nothing to do with Yogam finance and Investments Pvt. Ltd. This is proved wrong not only by Ext.M42, the Articles of Association but also Ext.M12 the decree in which the petitioner is a party. So it is very much clear that the petitioner has been indulging in business without any permission from the Respondent.

14. One argument that has been advanced on behalf of the petitioner with reference to Ext.M6, the lawyer notice is not at all sustainable. This notice refers to a letter from the Bank. The argument advanced on behalf of the petitioner is that in this letter the stand of the Bank was that the petitioner has nothing to do with Yogam Finance. If there was such a case for the petitioner he should have asked for the production of the document. Even assuming that the Bank has taken such a stand earlier, in the light of overwhelming evidence in this respect as already discussed above, this will not be of any consequence.

15. There is one more aspect that gives force to the case of the Respondent that the petitioner has been indulging in some trade or business without permission. The third charge against the petitioner is that he had issued several cheques in his account purportedly as repayment of the deposits collected towards the finance companies

run by him and all such cheques were returned due to insufficiency of funds in the account of the petitioner. The Management has produced Ext.M21 to Ext.M27, all dishonoured cheques, to prove this aspect. During his cross-examination the petitioner has admitted that Ext.M21, 22, 23 and 24 are cheques that were issued by him and were dishonoured. Ext.M21 and Ext.M22 require consideration while dealing with the first charge also. These two cheques were issued by Venkataraman on whose behalf Ext.M6 lawyer notice was issued. Of course, Ext.M21 and Ext.M22 would not show that those were issued towards repayment of the deposits collected towards finance company run by the petitioner. However, when the cheques are considered alongwith the execution petitions filed on behalf of Venkataraman there could not any doubt that these must have been issued by the petitioner towards repayment of the amount collected as fixed deposits in the finance company run by him. Thus these documents also fortify the case under the first charge. There is no evidence regarding the other two companies mentioned in the charge.

16. The third charge, as stated, is that cheques were issued by the petitioner and he has been engaging in trade in business outside the scope of his duties except with written permission of the bank and also has been doing act prejudicial to the interests of the bank as per Clause-5(j) of Memorandum of Settlement dated 10.04.2002. The petitioner has admitted that all the cheques other than Ext.M26 and Ext.M27 were issued by him. The argument on behalf of the petitioner has been that these cheques have nothing to do with the performance of his official duties but those are only his personal affairs and he has not committed any offence by issuing the cheques. It has also been pointed out by the counsel for the petitioner that offence under Section-138 is a compoundable one and for this reason also the charge will not lie against him. I have already referred to the cheques issued to Venkataraman while referring to the first charge. Even otherwise incurring debt is a minor punishment. Ext.M20 Memorandum of Settlement states that incurring debts to an extent considered by the Management as excessive is a minor offence. When third charge alone is taken into account without reading it alongwith Charge No. 1 it could be treated only as a minor offence coming under Clause-7(i) of Memorandum of Settlement. When considered by itself it cannot be stated that the misconduct under this charge is one that would cause prejudice to the interests of the bank. There is the fact that several cheques were issued by the petitioner and these were dishonored due to insufficiency of funds.

17. The fourth charge against the petitioner is that the total amount credited to the account of the petitioner during the period from August 2007 to May 2008 was very huge and disproportionate to his known source of income and this is covered under clause-5(i) and 5(j) of the Disciplinary Action Procedure for Workmen. The total amount transacted through the account of the petitioner during the period is shown as Rs. 37.85 lakhs.

18. The statement of account pertaining to the petitioner has been produced and is marked as Ext.M28. The transactions given in the charge are revealed from statement of account also. The petitioner has not stated anywhere before this evidence what these transactions are for. As revealed form the charge itself the gross salary drawn by the petitioner during the period is only Rs. 4,46,999/-. Before he got into the witness box the petitioner has not stated what those transactions were about and how he happened to have transactions for such a huge amount and what is the source of these transactions. In the Proof Affidavit in lieu of evidence filed by him the case advanced by the petitioner is that the transactions were by way of loan availed by him from the bank, personal loan availed and most of the cash transactions are by way of depositing the amount already withdrawn. He has further stated in his affidavit that though it is alleged that the transactions are beyond the source of income there had been no proceedings initiated against him under the Prevention of Corruption Act. He has further stated that he was only rotating the money which he had already withdrawn or the money which he had already got by personal loan etc.

19. The Respondent has proved by the evidence of MW1 and the statement of account pertaining to the petitioner itself that the transaction done by the petitioner from August 2007 to April 2008 was disproportionate to his known source of his income i.e. his salary. The petitioner had sufficient opportunity to disprove that this is not so. He should have proved that he had obtained all these amounts by way of loan from Respondent itself or that he had obtained personal loans. How could the petitioner have dealt with so much money within such a short period? It is for the petitioner to give an explanation. During his cross-examination the version of the petitioner was most evasive. He did not give a clear answer to the questions put to him regarding the remittances made by him during the period. He has stated that he does not remember what were most of the transactions about, though several of them are for amount more than a lakh. So there is no doubt that the remittances in his account during the period was disproportionate to his known assets. What is stated in charge 4 is that the petitioner has committed misconducts under clause-5(i) and (j) of the Disciplinary Action Procedure. Clause-5(i) refers to speculation in stocks, shares, securities or any commodity whether on his own account or that of any other persons. Certainly, Charge 4 will not come under this clause as there is no evidence to show that the petitioner had indulged in speculation in stocks, shares, securities, etc. However, the misconduct will come under Clause-(j). This states that doing any act prejudicial to the interests of the bank

is a misconduct. It has been argued on behalf of the petitioner that disproportionate assets of the petitioner, if any will not cause any prejudice to the interests of the Bank. It has been pointed out that what causes prejudice to the Bank has not been defined in Ext.M19, the circular on Disciplinary Action Procedure or Ext.M20, the Memorandum of Settlement. Certainly the argument of the counsel could not be accepted. It is only a matter of evidence what causes prejudice to the interests of the bank. If an employee is having assets disproportionate to his known source of income that is prejudicial to the interests of the Bank. The bank is expected to transact with the public, to have dealings with its customers. An employee having so many transactions and is not able to explain the same causes prejudice to the interest of the bank by his acts. He cannot take cover under the argument that they are all his personal dealings and he is not answerable to his employer for those transactions. Without doubt the petitioner was having assets disproportionate to his known source of his income and the Respondent will find it difficult to allow such person who is not able to explain his transactions deal with the customers. There is no doubt that the charge comes under Clause-5(j) of the Disciplinary Action Procedure.

20. The fifth charge against the petitioner is that while working as Head-Cashier at Mogappair Branch the petitioner has issued irreparable guarantee to three different firms using fabricated rubber stamps and address stamps of the Branch and thus he has committed the misconduct under Section-5(j) under disciplinary action procedure. MW1 has stated that Ext.M29, M30 and M31 are the letters issue by the petitioner. All theses documents are in the letter head of the bank. Ext.M29 is addressed to M/s Soundarraajan Mills Ltd. and states that the cheques for Rs. 18.00 crores in favour of Soundararajan Mills Limited will be honoured on the due date. There is a signature below as if that of the Branch Manager. However, the Branch Manager's name is given as that of the petitioner. Ext.M30 is a letter to M/s Bhoomika Developers in the letter head of the Bank confirming payment of Rs. 25.00 crores. Under this letter also the name of the petitioner is written as Branch Manager and there is a seal also. This is the case in respect of Ext.M31 addressed to M/s Bhoomika Developers by which guarantee is accorded for payment of Rs. 25.00 crores also. Neither in Ext.M30 nor in Ext.M31 there are any signatures. Though Ext.M29 contains a signature, there is nothing to show that it is that of the petitioner. Again, there is no evidence at all to show that such letters were sent by the petitioner at all. So the fifth charge against the petitioner is not proved.

21. The sixth charge against the petitioner is that he prepared vouchers to credit Rs. 15.00 crores in the account of Krishna Builders in respect of cheque issued by Krishna Builders but without sending any cheque for such amount, outward cheque receivable account was debited to the credit of the account of Krishna Builders. Regarding this charge also there is dearth of evidence on the part of the Respondent. Ext.M32 to 35 are marked through MW1 to substantiate the charge. However there is no evidence to show that the documents were prepared by the petitioner. There is nothing to show that the entries in Ext.M33 the statement of account of Krishna Builders has got anything to do with the petitioner. Ext.M34 is a letter from Mogappair Branch where the petitioner had been working to Madurai Branch. This letter is under the seal of the Branch Manager. Ext.M35 the letter written by the Central Bank to the Branch Manager of Mogappair Branch also does not show any involvement of the petitioner. So this charge also is not proved.

22. The argument that is being advanced on behalf of the petitioner is that even if the offences proved are taken into account they are only minor in nature and only minor punishment should have been imposed on the petitioner. Misconducts under Clasues-5(a) and 5(j) which are found proved are those that are described as grave in the Memorandum of Settlement and Disciplinary Action Procedure. Grave misconducts calls for grave punishment.

23. Still another argument advanced on behalf of the petitioner is that the petitioner was discriminated while imposing punishment. Ext.W48 to Ext.W50 and Ext.W52 to Ext.W55 are the documents produced by the petitioner to show that he was discriminated. The petitioner has stated in his Proof Affidavit that much lesser punishments only have been given to the Officers of the Bank against whom severe charges were found proved. He has stated in the affidavit that the Branch Manager of Mogappair Branch who had authorized entry of Rs. 15.00 crores which is the subject-matter of Charge No. 6 levelled against him was imposed only with the punishment of compulsory retirement though other charges were also proved against him and Bank had lost several crores of rupees. Again, Senior Manager of Ellis Nagar Branch, Madurai had caused loss of crores of rupees by extending loan on fabricated and forged documents and he is said to have been imposed the punishment of cut of 5 increments only. Senior Manager of Darapuram Branch who had been on indiscriminate lending and allowed unauthorized overdraft and caused loss of crores of rupees was imposed with the punishment of stoppage of 15 increments for one year. The Chief Manager of Coimbatore Mill Branch who had caused loss of crores of rupees by lending money against forged and fabricated documents is said to have been let off with stoppage of increment. One Rajeshwari, Computer Terminal Operator of Mogappair Branch who made entry of Rs. 25.00 crores of rupees in the account of Krishna Builders was also imposed with the punishment of stoppage of increment. Thus according to the petitioner he was discriminated when compared with the above persons. Ext.W50 the enquiry report in respect of Srinivasa Reddy, Chief Manager of Coimbatore Mill Branch, Ext.W52 the

Charge Sheet in respect of Muthappan, Senior Manager of Ellis Nagar Branch, Ext.W54 the Charge Memo in respect of Ramabadran who was Manager of Darapuram Branch and Ext.W55, the addendum to Ext.W54 Charge Memo and also Ext.W49, the final order in respect of Sivagurunathan Krishnan, Senior Manager of Mogappair Branch imposing punishment of compulsory retirement are the documents produced by the petitioner. Other than Ext.W49, documents showing punishment imposed on the concerned Officers are not produced. However, the statement made by the petitioner in proof affidavit regarding the punishment imposed are not challenged during cross-examination. On the other hand the cross-examination is to the effect that the punishment referred to are correct. In any case there is Ext.W49 which spells out severe charges for which punishment imposed is compulsory retirement only. So there is some justification in the case advanced by the petitioner that more severe punishment was imposed on him though the misconducts alleged against him are less severe than that of the Officers referred to earlier.

24. The next contention that is advanced on behalf of the petitioner is that he was dismissed from service in violation of Section-33 of the ID Act. The petitioner had approached the Assistant Labour Commissioner (ALC) even when he was suspended from service. The petition before the ALC is said to have been filed on 06.12.2010. The ALC has sent failure report to the Ministry. The case is that dismissal of the petitioner is even before the report reached the Ministry and so the dismissal is in violation of Section-33 of the ID act. It is not disputed by the Respondent that the dismissal order was effected even before the report reached the Ministry. The counsel for the petitioner has referred to the decision of the High Court of Madras in ARASU VIRAIVU POKKU VARATHU UZHAIYAR SANGAM VS. STATE EXPRESS TRANSPORT CORPORATION LTD. reported in 2006 3 LLJ 245 where it was held that the conciliation proceedings would not end with the closure thereof but continues until the receipt of the report by the appropriate government. So there is no doubt that during the pending of the conciliation proceedings dismissal order was passed by the Respondent.

25. The counsel for the Respondent has referred to the decision of the Apex Court in RAJASTHAN STATE ROAD TRANSPORT CORPORATION LTD. VS. SATYA PRAKASH reported in 2013 9 SCC 232 to advance his argument that even if there is violation of Section-33 the dismissal will not become illegal if misconduct against the concerned workman is found proved. In the above case the Tribunal had found that the concerned workman committed the misconduct. The Apex Court has held :

> "having held so the Tribunal was expected to dismiss the complaint filed by the Respondent. It could not have passed the order of reinstatement with continuity in service in favour of the Respondent on the basis that initially the appellant had committed a breach of Section-33(2)(b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the complaint was filed by the Respondent under Section-33A of the Act. The complaint having been filed it was adjudicated like a reference as required by the statute. The same having been done and the misconduct having been held to have been proved now there is no question of holding that termination shall still continue to be void and inoperative. The de-jure relationship of employer-employee would come to an end on the date of order of dismissal passed by the Appellant".

26. In answer to the argument based on the above decision in RAJASTHAN STATE ROAD TRANSPORT CORPORATION the counsel for the petitioner has referred to the decision in JAIPUR ZILA SAHKARI BHOOMI VIKAS BANK LTD. VS. RAM GOPAL SHARMA AND OTHERS reported in 2002 1 LLN 639. In this the Apex Court has held:

> "The proviso to Section-33(2)(b), as can be seen from its very unambiguous and clear language is mandatory. This apart, from the object of Section 33 and in context to the proviso to Section-33(2)(b) it is obvious that the conditions contained in the said proviso are to be essentially complied. Further any employer who contravenes the provisions of Section-33 invites the punishment under Section-31(1) with imprisonment for a term which may extend to six months. This penal provision is a pointer to the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory are to be satisfied if an order of discharge or dismissal passed under Section-2(b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee he has also to take the burden of discharging the statutory obligations placed on him by the said proviso".

27. It has been pointed out by the counsel for the petitioner that decision in Ram Gopal Sharma's case referred to above is by a five member Constitution Bench while the decision in RSRTC referred to earlier is by a two member bench and so the dictum laid down in the decision referred to earlier is to be accepted and the later decision is only per curium.

28. The counsel for the Respondent has tried to distinguish the two decisions. It has been pointed out by him that RAM GOPAL SHARMA's case has been referred to and distinguished in the subsequent decision. In the decision, while referring to the case it is stated that the

Constitution Bench in Ram Gopal Sharma's case was concerned with the interpretation of Section-33(2)(b) of the Act in the context of a reference arising out of conflicting judgments thereon, that the present case is not one where an application under Section-33(2)(b) of the ID Act was filed and that the section comes into play when the employer wants to proceed against an employer for any misconduct not connected with the dispute that is pending. The petitioner herein was dismissed by the Respondent on completion of the enquiry proceedings though he failed to wait till the failure report reached the appropriate government. This was not the matter that came up for consideration in Ram Gopal Sharma's case. The misconduct against the petitioner having been found established it will not be proper to direct reinstatement of the petitionr only on the ground that there is violation of Section-33(1) of the ID Act. This will be against the dictum laid down in RSRTC case. So the petitioner cannot take shelter under Section-33 of the ID Act also.

29. I have referred to the allegation of discrimination raised by the petitioner. Certainly, when the nature of misconduct committed by the petitioner is taken into account he does not deserve the punishment of dismissal from service. Though prejudice was caused to the Bank by the said acts, the Bank has not incurred any loss on account of the said acts. So it is only proper that the punishment imposed on the petitioner is modified and reduced to compulsory retirement from service.

In view of my discussion above, an award is passed as below:

The punishment imposed on the petitioner is reduced to Compulsory Retirement from service with superannuation benefits.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this the 23rd February, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri C. Sekar

For the 2nd Party/ Respondent : MW1, Sri N. Venkatesan

Documents Marked :

On the petitioner's side

Ext.No.	Date	Description
Ext.W1	22.12.2009	Suspension Order
Ext.W2	01.03.2010	Reply to Suspension Order
Ext.W3	06.12.2010	Petition filed in ALC
Ext.W4	16.06.2010	Charge Sheet
Ext.W5	06.08.2010 to 11.01.2011	Enquiry Proceeding
Ext.W6	26.08.2010	Management Exhibits
Ext.W7	26.08.2010	Defence Exhibits
Ext.W8	05.02.2011	Presenting Officer Brief
Ext.W9	25.02.2011	Defence Written Brief
Ext.W10	18.04.2011	Enquiry Officer Findings
Ext.W11	13.06.2011	Disciplinary Authority Disagreement
Ext.W12	06.12.2012	Show Cause Memo
Ext.W13	16.01.2013	Reply to Show Cause Memo
Ext.W14	07.10.2013	ALC (C) FOC
Ext.W15	08.10.2013	Administrative Order of Dismissal
Ext.W16	08.10.2013	Final Order of Dismissal
Ext.W17	20.11.2013	Appeal
Ext.W18	02.01.2013	Appellate Authority Order
Ext.W19	21.08.2013	M.V. Sivagurunatha Krishnan Former : Senior Manager, Mogappair Branch Case Details
Ext.W20	17.08.2013	Mr. V. Ramabhadran, Former : Branch Manager, Dharapuram Branch Case Details
Ext.W21	-	Mr. C. Muthappan Former : Senior Manager Ellis Nagar Branch Case Details
Ext.W22	-	Mr. P. Srinivasa Reddy Former: Chief Manager, Coimbatore Branch Case Details
Ext.W23	12.01.2015	Raised u/s 2(a) of ID 1947
Ext.W24	12.01.2015	Notice from ALC
Ext.W25	23.01.2015	Reply from Management
Ext.W26	04.02.2015	Reply from Management
Ext.W27	17.02.2015	Reply from Management
Ext.W28	17.02.2015	FOC
Ext.W29	09.07.1982	Appointment Order
Ext.W30	02.12.2008	Memo RO/1531
Ext.W31	24.12.2008	Memo RO/1648

Ext.W32	24.10.1996	C.O. Circular 192
Ext.W33	26.07.2010	Letter to RO
Ext.W34	06.03.2012	High Court Judgment
Ext.W35	29.11.2012	Letter to ALC
Ext.W36	22.07.2013	Letter to ALC
Ext.W37	25.07.2013	ALC Minutes
Ext.W38	17.02.2015	ALC Minutes
Ext.W39	23.04.2010	Sale Agreement Copy
Ext.W40	22.08.2013	Letter to ALC
Ext.W41	01.02.1995	Partnership Deed
Ext.W42	15.12.1998	Krishna Builder A/c Statement
Ext.W43	02.09.2009 to 10.11.2010	Mrs. V. Alamelu – Staff Cent Convenient A/c Statement
Ext.W44	03.02.1995	The acknowledgement of registration firm issued in respect of Swathi Investments
Ext.W45	01.02.1995	Deed of Partnership in respect of Swathi Investments
Ext.W46	-	Certificate of Incorporation of Yogam Finance and Investments Private Limited
Ext.W47	10.01.2005	Letter of appreciation given by the Bank
Ext.W48	25.11.2008	Complaint by the Mogappair Branch Manager to the Police
Ext.W49	21.08.2010	Final order is in respect of V. Sivagurunathan Krishnan, Senior Manager, Mogappair Branch imposing punishment of compulsory retirement
Ext.W50	02.11.2011	Findings given by the Enquiry Officer in respect of one Mr. P. Srinivasa Reddy, Chief Manager
Ext.W51	06.03.2012	Order of the Hon'ble High Court, Madras in WP No. 5195 of 2012
Ext.W52	17.07.2012	Charge Sheet to one Mr. C. Muthappan, Senior Manager
Ext.W53	22.07.2013	Letter of the Respondent Bank
Ext.W54	17.08.2013	Charge Memo issued to one Mr. V. Ramabadran, Manager, Mount Road Branch
Ext.W55	03.10.2013	Addendum to Articles of Charge
Ext.W56	18.07.2014	Report of the Assistant Labour Commissioner dated nil

On the Management's side

Ext.No.	Date	Description
Ext.M1	16.06.2010	Charge Sheet issued to petitioner
Ext.M2	18.04.2011	Findings of the Enquiry Officer
Ext.M3	06.12.2012	Second Show Cause Notice issued to petitioner
Ext.M4	08.10.2013	Order of dismissal issued to petitioner
Ext.M5	02.12.2013	Order rejecting appeal of the petitioner
Ext.M6	16.02.2009	Legal notice from R. Mohan, advocate
Ext.M7	10.02.1996	Swathy Investment FD Receipt
Ext.M8	07.06.1997	Swathy Investment FD Receipt
Ext.M9	26.10.1997	Swathy Investment FD Receipt
Ext.M10	06.06.1998	Dishonoured Cheque
Ext.M11	29.10.1998	Dishonoured Cheque
Ext.M12	26.09.2003	Order in OS 22/2
Ext.M13	07.08.2006	Letter from Regional Office to Mogappair branch
Ext.M14	02.08.2006	Letter from Zonal Office to Regional Office
Ext.M15	03.08.2006	Letter from Regional Office to Zonal Office
Ext.M16	31.07.2006	Letter from Mogappair Branch to Zonal Office
Ext.M17	02.08.2005	summons in OS 22/2
Ext.M18	30.06.2006	Summons in EP 1796/05
Ext.M19	29.04.2002	Circular on disciplinary action procedure
Ext.M20	10.04.2002	Memorandum of Settlement
Ext.M21	05.02.1998	Dishonoured Cheque
Ext.M22	05.03.1998	Dishonoured Cheque
Ext.M23	10.03.1999	Dishonoured Cheque
Ext.M24	25.03.1999	Dishonoured Cheque
Ext.M25	08.04.1999	Dishonoured Cheque
Ext.M26	06.05.2003	Dishonoured Cheque
Ext.M27	17.05.2003	Dishonoured Cheque
Ext.M28	01.06.2006 To 02.06.2010	Statement of Account pertaining to petitioner

Ext.M29	22.11.2008	Petitioner's letter to Soundararaja Mills
Ext.M30	07.10.2008	Petitioner's letter to Bhoomika Developers
Ext.M31	-	Petitioner's letter to Bhoomika Developers
Ext.M32	19.12.2008	Statement of Account
Ext.M33	05.08.2010	Statement of Account
Ext.M34	19.11.2009	Letter from Mogappair Branch to Madurai NBO
Ext.M35	20.11.2009	Letter from Madurai NBO to Mogappair branch
Ext.M36	August 2007 To Jan. 2009	Salary Statement of the petitioner
Ext,M37	13.08.2002	Second Show Cause Notice issued to petitioner
Ext.M38	31.08.2002	Punishment issued to petitioner
Ext.M39	21.06.2003	Letter from Dena Bank to Respondent
Ext.M40	09.03.2004	Letter from Dena Bank to Respondent
Ext.M41	25.05.2006	Letter from Dena Bank to Respondent
Ext.M42	-	Communication from Ministry of Corporate Affairs regarding articles of association and memorandum association of Yogam Finance and Investments Private Limited.

नई दिल्ली, 22 मार्च, 2016

का.आ. 589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ओवरसीज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 5/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-12011/81/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 589.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 22.03.2016.

[No. L-12011/81/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 17th February, 2016

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 5/2015

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Overseas Bank and their workman]

BETWEEN :

The Deputy General Secretary : 1st Party/Petitioner
All India Overseas Bank Union
Employees Union
Admn. Office, Post Bag No. 5231
763, Anna Salai
Chennai-600002

AND

The General Manager : 2nd Party/Respondent
Indian Overseas Bank
Anna Salai
Chennai-600002

Appearance :

For the 1st Party/ Petitioner Union : M/s C.R. Chandrasekaran, Advocates

For the 2nd Party/ Respondent : M/s NGR Prasad, V. Stalin, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/81/2014-IR (B.II) dated 21.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of IOB regarding reduction of Pension for R.N. Prasad to 1/3rd is justified or not? What relief the workman is entitled to?"

2. On receipt of the notice, this Tribunal has numbered it as ID 5/2015 and issued notices to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively. The petitioner has filed a rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a union registered under the Trade Unions Act and has under its sweep 95% of workmen employed by the Respondent Bank. The dispute is raised on behalf of R.N. Prasad, a member of the Union. Prasad was issued with a Charge Sheet culminating in reduction of his basic pension by 1/3 permanently. As per the Charge Sheet against him he had caused damage to the property of the Bank and its customer thus committing gross misconduct within the meaning of Para-17.5(d) and has also acted prejudicial to the interests of the Bank as defined in Para-17.5(j) of the Bipartite Settlement. By order dated 19.10.2013 the Disciplinary Authority passed order referring to Clause-5(d) and 5(j) of Memorandum of Settlement dated 10.04.2002 effective from that date only. This settlement was not in existence when Charge Sheet was issued to Prasad, the concerned workman on 17.07.2000. For this reason itself the order of the Disciplinary Authority dated 19.10.2013 is not legal. Punishment listed out in Para-17.6 of the Bipartite Settlement of 14.12.1966 only could have been imposed on the concerned workman. Apart from this the punishment has not been imposed by the Disciplinary Authority. He has only confirmed the order of the Board of the Bank. There is no rule or regulation to enable him to do so being an authority under the Bipartite Settlement. The co-delinquents of the concerned workman who have faced similar charge sheets were given lesser punishment only. One William Minz, who was Assistant Manager, was given the punishment of reduction of his Basic Pay by two stages only. Similarly, A.N. Singh, Senior Manager who had faced identical charge sheet was also given the punishment of reduction of Basic Pay with one stage only. One Sardar, Assistant Manager, was given the punishment of reduction of Basic Pay by four stages. T.N. Sinha belonging to Clerical Cadre who faced similar charge sheet was given the punishment of bringing down his Basic Pay by two stages only. The Petitioner Union has filed Writ Petition before the High Court of Judicature of Madras against the conduct of the enquiry proceedings as violative of Clause-17.4 of Bipartite Settlement. While disposing the Writ Petition, the Honble High Court has observed that considering the quantum of punishment awarded to co-delinquents and the fact that none of them were imposed with the major punishment of dismissal the petitioner is to appear for the enquiry before the concerned authority and the authority is to conclude the proceedings at the earliest. So the only option of the Disciplinary Authority was to accept the defence of the workman or to take the same decision as in the case of co-delinquent by reducing the Basic Pay by one or two stages. The enquiry against the petitioner was not conducted in accordance with the principles of natural justice. Sufficient opportunity was not allowed to the delinquent to put forth his case during the enquiry. The concerned workman was denied his right of appeal under the settlement as the punishment was by the Board of Directors. An order may be passed setting aside the punishment imposed on the concerned workman as not justified.

4. The Respondent has filed Counter Statement contending as below:

While R.N. Prasad the concerned workman was working as Special Cadre Assistant at Dhanbad Branch he had dishonestly and fraudulently issued pre-dated pay orders favouring Sales and Marketing Division of Bharat Coking Coal Limited. He was charge sheeted on 17.07.2000. The other employees who were allegedly involved in the above misconduct were also charge sheeted separately on the same day. Enquiries into the charge sheets against all other delinquents other than R.N. Prasad have been concluded. Pre-dated pay orders were issued by R.N. Prasad and others in favour of BCCL, Dhanbad to purchase coal from the said establishment. The issuance of predated pay orders induced the BCCL authorities to deliver coal after expiry of the date of offer. CBI had submitted chargesheet in the matter against the accused including Prasad under different sections of the Indian Penal Code. Prasad and others had allowed persons known to them to obtain pay order previous to the date of application and remittance of cash and enabled them to dishonestly utilize the same for purchase of coal from BCCL after expiry of dates of offer. Thus, Prasad and others have falsified records of the Bank in perpetrating the above fraudulent acts. While enquiry proceedings was going on the concerned workman made a request not to continue the enquiry till completion of the criminal trial against him. This request was rejected by the Disciplinary Authority. The concerned workman field Writ Petition before the High Court of Judicature at Chennai and obtained an interim injunction against the bank from continuing the departmental disciplinary proceedings against him. The Writ Petition was disposed on 19.09.2011 and the concerned workman was directed to cooperate with the enquiry. The workman filed Writ Appeal against this order and the appeal was dismissed on 12.12.2011. The concerned workman superannuated on 30.06.2011. Departmental proceedings was continued against him and he was awarded punishment under the Pension Regulations. The workman had opted for pension and was governed by the Pension Regulations of the Bank. As per the pension regulations departmental proceedings instituted while in service shall be deemed to be proceedings under the pension regulations after retirement of the employee. As per the Pension Regulations the action of the Disciplinary

Authority in awarding punishment of withholding of 1/3 of pension is in order. The concerned workman had issued 46 pre-dated pay orders under his signature alongwith the signature of another official to favour some private parties known to him for participating in coal allocation process. During the enquiry the concerned workman had cross-examined the Management witnesses. The Enquiry Officer had found the charges against the concerned workman to be proved. It is incorrect to state that enquiry was not conducted in accordance with the principles of natural justice. The contention that the concerned workman had meted out discrimination in imposition of punishment also is without basis. The number of incidents and irregularities in respect of the other delinquents differed and the punishment imposed on them related to earlier period. The petitioner is not entitled to any relief.

5. The petitioner has filed a rejoinder denying the contentions in the counter statement and reiterating his case in the Claim Statement.

6. In view of the contentions raised by the petitioner that departmental enquiry was not conducted in a fair and proper manner, this issue was considered as a Preliminary Issue. By order dated 10.08.2015 this Tribunal has found that enquiry was fair and proper. There is no necessity to consider the issue again.

7. The evidence in the case of consists of documents marked as Ext.W1 to Ext.W34 and Ext.M1 to Ext.M10. No oral evidence was adduced on either side.

8. **The points for consideration are :**

(i) Whether the action of the Respondent in reducing pension of the concerned workman to 1/3 is justified?

(ii) What, if any is the relief to which the concerned workman is entitled?

The Points

9. The ID is raised by the Petitioner Union on behalf of R.N. Prasad, the concerned workman against whom disciplinary proceedings had been initiated by the Respondent Bank while he was working as Special Cadre Assistant at Dhanbad Branch of the Bank. Charge Sheet dated 17.07.2000 had been issued to the concerned workman. An enquiry had been conducted against him and the punishment of reduction of 1/3 of the pension had been imposed on the concerned workman by order dated 19.10.2013. The disciplinary proceedings against the workman was started not long after charge sheet was issued. As could be seen from the Counter Statement examination of the Management witnesses was over and enquiry was postponed to another date. After this a request was made on behalf of the concerned workman to postpone the proceedings on the ground that it cannot be continued till completion of the criminal proceedings that had been initiated against him. This request seems to have been turned down on the ground that criminal case has not reached the trial stage. The concerned workman approached the Hon'ble High Court and filed Writ Petition No. 39807/2002 and obtained an interim injunction order against continuing the departmental disciplinary proceedings. The Writ Petition was disposed on 19.09.2011. The workman filed Writ Petition 2300/2011 and this was dismissed on 12.12.2011. In the meanwhile the concerned workman had superannuated on 30.06.2011. It was after disposal of the Writ Appeal enquiry proceedings was continued resulting in long delay in the disposal of the proceedings. It is only on 19.10.2013 the order under challenge was passed by the Disciplinary Authority.

10. The petitioner has raised several grounds in the Claim Petition against the order imposing penalty on the concerned workman by which his pension was reduced by 1/3rd. On going through the Claim Statement I do not find any attack by the petitioner against the finding of guilt entered by the Enquiry Officer. It is stated in the Claim Statement that enquiry was conducted not in compliance with the principles of natural justice, that there was delay in proceeding with the enquiry after disposal of the Writ Appeal by the High Court, that the punishment is not under the provision by which the concerned workman was charged, that the concerned workman was discriminated while imposing punishment, etc. But nowhere in the Claim Statement it is seen stated that the concerned workman has not committed the misconducts alleged. So it is to be taken that the petitioner is not attacking the finding other than for the reason that enquiry was not fair and proper.

11. Even assuming that the petitioner is attacking the correctness of the finding entered in the enquiry proceedings, it could be seen that there could not have been a finding otherwise. Three charges were raised against the concerned workman by charge sheet dated 17.07.2000. The first charge states that the workman had dishonestly and fraudulently issued predated pay orders as per Annexure enclosed, favouring Sales and marketing Division of BCCL, Dhanbad at the instance of persons known to him and thus he had allowed persons known to him to obtain pay orders previous to the date of application and remittance of cash and enabled them to dishonestly utilize the same for purchase of coal from BCCL after expiry of dates of offer. The second charge is that to cover up the fraud referred to in the first charge, on the date of presentation of the pay orders the dates of these orders were altered as the dates of application for pay orders. The third charge is that the workman had thus falsified the records of the bank in perpetrating the fraudulent acts. The enquiry officer found charges 1 and 3 proved. It is on the basis of this finding the pension of the workman was reduced by 1/3rd by the Disciplinary Authority.

12. The annexure to the charge mentions the number, amount, the date of pay order as per Bank's book and the date in the pay order in respect of 47 pay orders, the

aggregate amount of which would come to Rs. 2.06 crores. The concerned workman has not given any explanation to the charge, as seen from the Enquiry Officer's report. He has not given any evidence before the Enquiry Officer also. MW2, the Manager of the concerned branch at that time had given evidence referring to the pay orders. It is mainly on the basis of this the enquiry officer has recorded his finding. On going though the Claim Statement I do not find any contention for the petitioner that these pay orders are not in the handwriting of the concerned workman or that these do not contain his signatures. What is stated in the Claim Statement is that the pay orders are to be signed by an Officer also. That the pay orders contained the signature of any Officer will not make the act of the concerned workman less grave. The concerned workman had no authority to issue such pay orders for amount above Rs. 10,000/-. So there is no doubt that the concerned workman had issued predate pay orders, 47 in number for amount aggregating more than Rs. 2.00 crores and the records of the bank was falsified for issuing such pay orders.

13. Now the contention raised on behalf of the petitioner for attacking the punishment imposed on the workman can be considered. The charge sheet was apparently issued for misconducts under Clause-17.5(d) which is willful damage or attempt to cause damage to the property of the Bank or any of its customers and 17.5(j) which is doing any act prejudicial to the interests of the Bank or gross negligence or negligence involving or likely to involve the Bank in serious loss as per the Bipartite Settlement of 1966. However, the Disciplinary Authority who imposed punishment referred to Clause-5(d) and 5(j) of Memorandum of Settlement dated 10.04.2002 and found that the concerned workman had committed misconducts under these clauses and punishment was imposed based on these. The argument that is advanced on behalf of the petitioner is that the concerned workman having been charged under the Bipartite Settlement of 1966, punishment could not have been under the relevant clauses of 2002 settlement which was not in existence at the time when the Claim Statement was issued. Certainly, punishment could be based on the charge sheet that was issued only. So the punishment has to be under the settlement of 1966. However, I have gone through the relevant clauses of Bipartite Settlement of 1966 as well as the settlement of 2002. Clause-17.5(d) and (j) in the settlement of 2002 is an exact replica of the clauses in 1966. There is not even a slight change in the latter. So merely because the order of the Disciplinary Authority states that the punishment is as per the clauses in 2002 settlement, it has not caused any prejudice to the concerned workman whether it is settlement of 1966 or 2002 the misconducts alleged are the same. In all probability, since the settlement that was in vogue was that of 2002 at the time when the Disciplinary Authority passed its order, either because he was under the impression that order could be only under the existing settlement or due to oversight he might have shown it as under the settlement of 2002. This has not changed the situation in any manner. The concerned workman has not been affected also by this in any manner.

14. The second contention that is raised in the Claim Statement is that the punishment is actually not imposed by the Disciplinary Authority but he has only confirmed punishment that was proposed by the Board of Directors. The wording used by the Disciplinary Authority is that he "is confirming the punishment of withholding of 1/3 of the pension permanently".

15. There is no basis for the above contention on behalf of the workman also. As already stated the concerned workman had retired form service on superannuation by the time the enquiry proceedings had been completed. Since the workman had superannuated punishment is imposed as per the provisions of the Pension Regulations. The concerned workman could not have been imposed the punishment of discharge, dismissal or other lesser punishment provided in the Bipartite Settlement since he had retired from service by the time enquiry was completed.

16. Imposition of punishment based on Pension Regulations is quite in order as could be seen from the regulations itself. Regulation-43 of the Pension Regulations states that the competent authority may by order in writing withhold or withdraw pension or part thereof whether permanently or for a specified period if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. Regulation-48 states about recovery of pecuniary loss caused to the Bank. Regulation-48 (1) states that the competent authority may withhold or withdraw pension or part thereof whether permanently or for a specified period and order recovery from the pension. Regulation-48 (2) states that recovery shall not ordinarily be made at a rate exceeding 1/3 of the pension admissible on the date of retirement of the employee. As per the proviso to Regulation-48(1) any departmental proceedings instituted while the employee was in service, after retirement of the employee shall be deemed to be proceedings under the concerned regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee has continued in service. There is no case for the Bank that any pecuniary loss was caused to the Bank by the act of the concerned workman. However, the Bank has suffered in the sense that the act of the concerned workman had been prejudicial to the interest of the Bank. The image of the Bank was tarnished very much by the act. So punishment is in order under Regulation-43 of the Pension Regulations.

17. The argument advanced that the Disciplinary Authority only confirmed the punishment and for this

reason also the punishment is not legal also has no basis. Once the delinquent has reached the stage after superannuation the Board of Directors are to be consulted before any final orders are passed, as per the proviso to Regulation-48. It was because of this provision the proposal for punishment of reduction in pension was sent to the Board of Directors and it was approved by the Board. It is because of this, the Disciplinary Authority has used the wording that he is confirming the punishment proposed. The proposal for punishment is in fact by the Disciplinary Authority itself. The board has only approved the proposal. So there is nothing illegal in the punishment imposed, on this count also.

18. The last argument that has been advanced on behalf of the petitioner is that discrimination has been meted out to the concerned workman while imposing punishment. The Claim Statement itself refers to the names of some other employees including three Officers against whom charge sheets were issued for similar offences and were punished. The contention raised on behalf of the workman is that this other offenders were left out with lesser punishments like reduction in the Basic Pay by two stages, four stages, etc. For one thing, the enquiry was concluded only after the petitioner has retired on superannuation. So the punishment of reduction in Basic Pay or such other punishments contemplated in the Bipartite Settlement would not have been possible in the case of the concerned workman. The only punishment that could have been imposed is reduction in the pension and recovery from pension if there was any pecuniary loss.

19. Even on considering the punishment imposed on the other employees, it could be seen that the claim of the concerned workman that there was total discrimination could not be accepted. Of course charge sheets issued to those employees were almost for similar misconducts. However, there is difference in the gravity of the offences in the sense that the concerned workman had issued many number of pay orders than that were issued by those others. The workman had taken pains to produce the charge sheet issued to those other employees. Ext.W12 is the Charge Sheet issued to one T.N. Sinha. This Charge Sheet was also issued on 17.07.2000. The charge is that he had issued pre-dated pay orders also favouring Marketing Division of BCCL, Dhanbad. The charge shows that he had issued two pay orders of an aggregate amount of Rs. 7.5 lakhs. As per Ext.W13, the punishment of bringing down the Basic Pay by two stages was imposed on him. Ext.W14 is the Charge sheet against one William Minz, Assistant Manager on 17.07.2000 itself alleging that he issued pre-dated pay orders, 10 in number, the aggregate amount being about Rs. 34.00 lakhs. By Ext.W15 the punishment of reduction in Basic Pay by five stages in the time scale of pay for a period of one year with further direction that he will not earn increment on pay during the period of such reduction and on the expiry of such period the reduction will have the effect of postponing his future increment as per the discipline and appeal regulations of the Bank in respect of Officers was imposed on him. He filed an appeal and the punishment was brought down to reduction in Basic Pay by two stages rather than five stages. Ext.W17 is the charge sheet issued to one A.N. Singh on the same day for issuing pre-dated pay orders, two in number for an aggregate amount of above Rs. 9.00 lakhs Originally, he was awarded penalty of reduction in Basic Pay by five stages. As seen from Ext.W19, the order in appeal this was brought down to reduction in Basic Pay by one stage. Ext.W20 is the charge sheet issued to D.N. Sardar, Assistant Manager on the same date for issuing 37 pre-dated pay orders, the aggregate amount being more than Rs. 1.65 crores. As per Ext.W21, the order in appeal, the initial order of reduction in Basic Pay by five stages in the time scale for a period of one year was reduced to reduction in Basic Pay by four stages.

20. On an analysis of the above four Charge Sheets and the respective punishment imposed on the delinquents, it could be seen that the punishment is not the same for all the persons. The competent authority seems to have taken into account the number of pay orders issued by the concerned persons and the amount involved. That is why D.N. Sardar who issued several pay orders received the maximum punishment.

21. The petitioner has issued 47 pay orders and his case could not be compared with the case of those persons who had issued only one or two or only a few pay orders. However, his case is somewhat similar to that of D.N. Sardar. There is the fact that the punishment on him was reduction in pay by four stages and that also for one year only and if retired he might be enjoying full pension unlike in the case of concerned workman. So to make the punishment of the concerned workman somewhat in parity with that of D.N. Sardar some reduction will not be out of place. Reduction of pension by one fourth will put the concerned workman in the same scale as that of D.N. Sardar.

Accordingly, an award is passed as below:

The punishment imposed on the concerned workman is reduced to withholding of pension by 1/4th permanently, as per the Pension Regulations of the Respondent.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 17th February, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : None

For the 2nd Party/Management : None

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	14.12.1996	Extracts of first bipartite settlement
Ext.W2	31.03.1970	Extracts of Banking Companies (A&T of Undertakings) Act, 1970
Ext.W3	30.04.1979	Extract of a Bipartite Settlement
Ext.W4	17.07.1994	CBI – FIR
Ext.W5	01.04.2000	Sanction Order issued by J.K. Gupta DGM
Ext.W6	31.05.2000	Charge sheet filed by CBI before Special Court, Dhanbad
Ext.W7	17.07.2000	Charge sheet issued by J.K. Gupta, DGM to R.N. Prasad (similar to 4 others)
Ext.W8	10.04.2000	Extracts of a Memorandum of Settlement
Ext.W9	29.10.2002	R.N. Prasad's request to recall MW1 again for cross-Examination
Ext.W10	26.10.2002	DA (DGM) refused to recall MW1 for cross
Ext.W11	29.10.2002	Interim Injunction granted in M.P. No. 59236/2002 on admitting WP 39807/2002 by the Hon'ble High Court restraining the Bank from pursuing with enquiry proceedings against R.N. Prasad
Ext.W12	17.07.2000	Charge sheet issued to Mr. T.N. Sinha, Clerical Staff by DA/Dy. General Manager
Ext.W13	26.06.2003	Punishment inflicted on Mr. T.N. Sinha, Clerical Staff by DA/DGM
Ext.W14	17.07.2000	Charge sheet issued to Mr. William Minz, Assistant Manager by DA/DGM
Ext.W15	07.05.2003	Order of the DA/DGM issued to Mr. William Minz, Assistant Manager
Ext.W16	13.11.2003	Penalty inflicted on Mr. William Minz, Assistant Manager by DA/GM
Ext.W17	17.07.2000	Charge sheet issued to Mr. A.N. Singh, Senior Manager by DA/DGM
Ext.W18	07.05.2003	Order of the DA/DGM issued to Mr. A.N. Singh, Senior Manager
Ext.W19	13.11.2003	Penalty inflicted on Mr. A.N. Singh, Senior Manager by AA/GM
Ext.W20	17.07.2000	Charge sheet issued to Mr. D.N. Sardar, Assistant Manager by DA/DGM
Ext.W21	13.11.2003	Penalty inflicted on Mr. D.N. Sardar, Assistant Manager by AA/GM
Ext.W22	30.06.2011	Date of Superannuation of R.N. Prasad (conditional)
Ext.W23	19.09.2011	Order in WP 39807/2002 by High Court dismissing it
Ext.W24	08.05.2012	R.N. Prasad to DA for copies of MEs
Ext.W25	07.06.2012	R.N. Prasad to DA for copies of MEs
Ext.W26	09.06.2012	DA's reply that MEs are not retrievable
Ext.W27	05.07.2012	DA's enquiry findings
Ext.W28	08.12.2012	Board of Directors refused to punish R.N. Prasad
Ext.W29	20.03.2013	Board of Directors refused to punish R.N. Prasad
Ext.W30	19.10.2013	Punishment inflicted on R.N. Prasad
Ext.W31	22.10.2013	Pension Cell to R.N. Prasad advising quantum of punishment
Ext.W32	29.10.2013	R.N. Prasad's request under RTI for Board Resolution copies denied
Ext.W33	29.04.2014	R.N. Prasad's appeal to the Appellate Authority
Ext.W34	14.06.2014	DGM, the Appellate Authority dismisses the appeal of R.N. Prasad

On the Management's side

Ex.No.	Date	Description
Ext.M1	22.06.2002	Enquiry Proceedings

Ext.M2	24.10.2002	Defence Representative of petitioner letter to Enquiry Officer
Ext.M3	12.12.2011	Order in WA No. 2300 of 2011
Ext.M4	14.05.2012	Enquiry Proceedings
Ext.M5	21.05.2012	Respondent letter to the R.N. Prasad forwarding Presenting Officer's brief
Ext.M6	17.08.2012	Respondent letter to R.N. Prasad informing about hearing
Ext.M7	04.09.2012	Respondent letter to R.N. Prasad informing about hearing
Ext.M8	24.09.2012	Proceedings of the personal hearing
Ext.M9	02.04.2014	Personal hearing notice in respect of appeal dated 07.12.2013
Ext.M10	29.04.2014	Proceedings of the personal hearing.

नई दिल्ली, 22 मार्च, 2016

का.आ. 590.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चेन्नई पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ सं. 65, 67/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-33011/2/2014-आईआर (बी-II),

सं. एल-33011/1/2014-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 590.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 65, 67/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Chennai Port Trust and their workmen, received by the Central Government on 22.03.2016.

[No. L-33011/2/2014-IR (B-II),

No. L-33011/1/2014-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 4th February, 2016

Present :

K. P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 65 and 67/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Chennai Port Trust and their workman]

BETWEEN :

Sri V.K. Balakrishnan
General Secretary
Former Trustee of Chennai Port Trust
The Madras Port Trust Railwaymen Union
Bhagat House, New No. 47,
Old No. 204
Prakasam Salai
Chennai-600108 : 1st Party Petitioner in ID No. 65/2014

AND

The Chairman
Chennai Port Trust
Rajaji Salai
Chennai-600001 : 2nd Party/Respondent

Appearance :

For the 1st Party Petitioner : M/s Balan Haridas, Advocates

For the 2nd Party Respondent : Sri S.P. Patel

The General Secretary
The MPT Railway Men's Union
V.K.B. Bhavan
Old No. 18, New No. 62
4th North Beach Road
Chennai-600001 : 1st Party Petitioner in ID No. 67/2014

AND

The Chairman
Chennai Port Trust
Rajaji Salai
Chennai-600001 : 2nd Party/Respondent

Appearance :

For the 1st Party Petitioner : M/s. Balan Haridas, Advocates

For the 2nd Party Respondent : Sri S.P. Patel

COMMON AWARD

ID 65/2014

The Central Government, Ministry of Labour & Employment vide its Order No. L-33011/2/2014-IR (B.II) dated 01.08.2014 referred the above Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in ID 65/2014 is as under:

"Whether the action of the Chennai Port Trust management regarding termination of Settlement OT paid to the workers by way of sending notice as per Section 19(2) of the ID Act, 1947 is justifiable or not? If not, to what relief the workers are entitled to?"

ID 67/2014

The Central Government, Ministry of Labour & Employment vide its Order No. L-33011/1/2014-IR (B.II) dated 04/07.08.2014 referred the above Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in ID 67/2014 is as under:

ID 67/2014

"Whether the action of the management of Chennai Port Trust regarding stoppage of OT Payment for the technician posted in Diesel Loco Service Station at Marshalling Yard at Chennai Port Trust is justified or not? What relief the workmen are entitled to?"

3. On receipt of the Industrial Dispute this Tribunal has numbered them as ID 65 and 67/2014 respectively and issued notices to the parties. Both sides have entered appearance and filed Claim and Counter Statement respectively. The petitioners in both cases have filed rejoinder in answer to the respective Counter Statements.

4. The averments in the Claim Statement in ID 65/2014 are as below:

The petitioner is a recognized union and it has 1106 members working with the Respondent. The Respondent has entered into several settlements with the Petitioner Union. The employees in the Marine Department of the Respondent are engaged in receiving the ships to the Chennai Port and smooth exit of the ships out of Chennai Port. The employees are working in the Floating Craft in the deck side, in the engine side and in the signal stations. Because of the hazardous nature of work done by these employees the Respondent had been paying monthly Special Allowance to the Marine Workers of the Pilotage Section, Mooring Section, Signal Station and the Yard Staff of the Marine Department from 1997 onwards. The Respondent had entered into a settlement with the Petitioner Union on 21.10.1992 under Section-18(1) of the ID Act by which the monthly allowance paid to the employees was withdrawn and one hour fixed overtime at single hourly rate was agreed to be paid with effect from 01.07.1992 onwards to each of the aforesaid categories of workers and also workers of the service station of the Marine Department. This one hour single hourly fixed overtime was increased to double hourly overtime w.e.f. 01.04.1994 by order of Deputy Port Conservator dated 13.06.1994. There had been settlement under Section-18(1) of the ID Act between the Petitioner Union and the Respondent on 19.,03.2001 consequent to the arbitration award dated 02.08.1999. By this settlement the Union agreed not to implement the clause of the arbitration award which recommended the strength of mooring crew at 180 against the existing strength of 149 and in turn the Respondent agreed to extend one hour single overtime per date of attendance to Floating Craft crew and signal station staff of the Marine Department w.e.f. 01.02.2001. This was in addition to the Overtime Allowance given under the settlement dated 21.10.1992 which had been increased by order dated 13.06.1994. Thus the employees in the aforesaid categories in the Marine Department were given double hour overtime and one hour single rate overtime per day of attendance. Thus the employees had been receiving overtime wages which is actually allowance for all practical purpose, taking note of the hazardous work done by the said categories of employees. Taking into account the nature of work done by the Diesel Loco Drivers the Respondent granted two hours overtime per day of attendance w.e.f. 09.02.1997. On 08.03.2001 the Respondent entered into a settlement under Section-18(1) of the ID Act with the petitioner by which the two hours overtime was extended to the yard foreman, Chief Shunting Master/ Shunting Masters and coupling porters Grade-I and II on par with Diesel Loco Drivers w.e.f. 19.02.2000. Thus the above categories of employees have been receiving 2 hour overtime per days' attendance. On 20.03.2013 the Respondent issued notice proposing to terminate the settlements dated 21.10.1992, 08.03.2001 and 19.03.2001. On receipt of this notice the Petitioner Union issued a strike notice on 24.04.2013. Conciliation was initiated by Labour commissioner (C), Chennai but it ended in failure. In 2004 also similar notice had been issued by the Respondent, however, this was not acted upon. After notice dated 20.03.2013 the Respondent had discontinued the allowance by way of overtime given pursuant to the settlements dated 21.10.1992, 08.03.2001 and 19.03.2001 from July 2014. The Marine Department employees have been paid only one hour double rate of overtime from the month of July 2014. The Loco Department employees have been granted only half single overtime and half double overtime from July 2014 for performance of 8 hours shift. Unless settlement earlier referred to are replaced by another settlement the overtime wages paid under the settlement cannot be withdrawn unilaterally by the Respondent. When the overtime wages had become part of the service condition in respect of category of employees in the

Marine Department and in the Loco Department the same cannot be withdrawn without notice under Section-9A of the ID Act. Withdrawing the overtime allowances is illegal and void-abinitio. A notice under Section-19(2) of the ID Act will not terminate the settlements. The Respondent should have raised a dispute to terminate the settlements and only in the event of an award replacing the settlement the overtime allowance can be withdrawn. The Petitioner Union has raised the dispute in the above circumstances. The meeting convened by the Respondent consequent to this as advised by the Assistant Labour Commissioner did not yield any result. An award may be passed holding that the action of the Respondent in discontinuing the allowance by way of overtime to the categories of Marine Department employees covered under the Settlement dated 21.10.1992 and 19.03.2001 and the Loco Department employees covered under the Settlement dated 08.03.2001 from July 2014 is illegal and also directing the Respondent to restore the benefit of allowance by way of overtime to the employees covered under the terms of the above settlements.

5. The Respondent has filed Counter Statement contending as below:

The dispute is not maintainable either in law or in facts. Due to financial constraints consequent to the stoppage of handling of iron ore, coal, etc. pursuant to a Green Bench order of the High Court of Madras austerity measures have been taken and orders have been passed stopping the settlement based overtime and non-settlement overtime granted to some categories of employees and direction was issued to adhere to department-wise ceiling fixed for payment of overtime on need basis. The overtime payment has not been stopped forthwith but only regulated as per the economic conditions prevailing in the Chennai Port Trust. Notices were issued terminating the 3 settlements entered into with the Madras Port Trust Employees Union and 3 other settlements entered with the Madras Port Trust Railwaymen Union, the petitioner. The Respondent had entered into settlements with the Union only to improve productivity when it had very good business. Overtime payment will not come under wages. It is being granted for the employees who have worked beyond their scheduled working hours and that too on exigency. The National Industrial Tribunal has recommended in its award that all kinds of wasteful and restrictive practices such as notional booking, fixed overtime / relieving overtime etc. should be stopped completely. The petitioner has no locus-standi to raise the dispute. The petitioner is not entitled to any relief.

6. The petitioner has filed rejoinder denying the contentions in the Counter statement and reiterating his case in the Claim Statement.

7. The averments in the Claim Statement in ID 67/2014 are as below:

The petitioner is a recognized union and the Respondent has entered into several settlements with the Petitioner Union. The dispute concerns withdrawal of allowance given by way of overtime to the technicians working in Diesel Loco Service Station at Marshalling Yard of Chennai Port Trust. Because of hazardous nature of work done by the employees working in the Diesel Loco Service Station at Marshalling Yard there had been demand for introduction of incentive scheme. The Respondent approved the incentive scheme in the year 1997 and this was recorded in the minutes of discussion held on 10.12.1999 and sent to the Government for approval. As the matter was stuck up with the Central Government, on discussion with the petitioner the Respondent agreed to give 4 hours overtime wages on Saturdays in lieu of incentives to the employees of the Diesel Loco Service Station. The employees had been receiving this overtime wages from 1997. This is allowance / incentive for all practical purposes. From January 2014 the Respondent reduced the overtime wages to 1.5 hours and discontinued it totally from June 2014 without any notice. Overtime wages had become part of the service condition in respect of technicians in the Diesel Loco Service Station at Marshalling Yard and the same cannot be withdrawn without notice under Section-9A of the ID Act. Withdrawal of overtime allowances is grossly illegal and void-abinitio. The dispute is raised accordingly. An award may be passed holding that the action of the Respondent in discontinuing the allowance by way of overtime is illegal and also directing the Respondent to restore the benefit of allowance.

8. The Respondent has filed counter Statement contending as below:

The dispute is not maintainable either on law or in facts. Due to financial constraints consequent to the stoppage of handling of iron ore, coal, etc. pursuant to the Green Bench order of the Madras High Court austerity measures have been taken by the Respondent. The overtime payment has not been stopped completely but only regulated as per the economic conditions prevailing in the Chennai Port Trust. Wages given to the employees on Saturdays was only with regard to the extra time worked by them and not by way of incentive as claimed by the petitioner. The working time on Saturdays is from 07.30 AM to 12.30 PM. Due to exigencies of work that prevailed in the year 1999 the employees were asked to work 4 hours more on Saturdays. There is every justification for stoppage of overtime payment for the technician employees in Diesel Loco Service Station at Marshalling Yard. The concerned workmen are not entitled to any relief.

9. The petitioner has filed rejoinder in answer to the Counter Statement denying the contentions therein and reiterating the case in the Claim Statement.

10. The two IDs were tried jointly as the parties to both IDs are the same and the issues raised are almost similar. ID 65/2014 was treated as the main case and evidence was recorded in the same.

11. The evidence in the case consists of oral evidence of WW1 and MWs 1 and 2 and documents marked as Ext.W1 to Ext.W29 and Ext.M1 to Ext.M9.

12. The points for consideration in ID 65/2014 are:

(i) Whether the action of the Management in denying overtime payment to the workers by sending notice under Section-19(2) of the ID Act is justified?

(ii) What, if any is the relief to which the workmen are entitled?

13. The points for consideration in ID 67/2014 are:

(i) Whether the action of the Respondent in stopping overtime payment for the technicians in Diesel Loco Service Station in Marshalling Yard is justified?

(ii) What, if any is the relief to which the concerned workmen are entitled?

Points in ID 65/2014

14. The dispute in ID 65/2014 is raised challenging the action of the Management in terminating the settlements dated 21.10.1992, 08.03.2001 and 19.03.2001 by issuing notices under Section-19(2) of the Industrial Disputes Act.

15. The facts of the case put forth by the petitioner in the Claim Statement are mostly admitted by the Respondent. It is not in dispute that the three settlements referred to earlier were entered into by the petitioner and the Respondent and by these settlements the concerned workmen were obtaining amount as overtime payment. Even earlier a section of the workmen of the Respondent were receiving amount as allowances. According to the petitioner this was because of the hazardous nature of the work done by the concerned workmen. Thus the employees working in the floating craft in the deck side, engine side and signal stations were getting such allowance. Later, rather than allowance, overtime payment was made on the basis of different settlements. The first settlement in this respect was on 21.10.1992 entered into under Section-18(1) of Industrial Disputes Act. Copy of this settlement is marked as Ext.W1. It could be seen even from Clause-4 of the settlement which provided for overtime rate that earlier payment was made as allowance. Clause-4 of Ext.W4 runs as below:

> It is further agreed that consequent to the withdrawal of payment of monthly allowance referred to in Clause-3 in respect of the aforesaid categories of marine workers one hour fixed overtime at single hourly rate would be paid w.e.f. 01.07.1992 onwards to each of the aforesaid categories of workers and also to the workers of the service station of the Marine Department on the days of attendance.
>
> Clause-3 of the same settlement is to the effect that the allowance that was being paid to the marine workers of pilotage section, mooring section, signal station and the yard of the marine department will be withdrawn. It is on such withdrawal that one hour fixed hour fixed overtime at single hourly rate was provided as per Clause-4.

16. Another settlement was entered into on 08.03.2001 in respect of Yard Foreman, Shunting Masters etc. Ext.W4 is the copy of this settlement. Even before this settlement was entered into the Diesel Loco Drivers were granted two hours overtime per day of attendance w.e.f. 09.02.1997. By Ext.W4 settlement the respondent extended the two hours overtime to the Yard Foreman, Chief Shunting Masters / Shunting Masters and Coupling Porters of Grade-I and II.

17. Ext.W5 is another settlement entered into on 19.03.2001. An arbitration award was pronounced by Captain Kishore on 02.08.1999. The arbitration award had recommended that the strength of the mooring crew should be increased to 180 from the existing strength of 149. Ext.W5 seems to have been executed as a substitute for not implementing this suggestion. The Union agreed not to implement this suggestion for increase in the strength of the mooring crew. In turn the Respondent agreed to extend one hour single hour overtime per day of attendance to the floating craft crew and signal stations staff of the Marine Department w.e.f. 01.02.2001.

18. The Respondent had issued Ext.W7, W10 and W11 notices proposing to terminate the above three settlements by which overtime payment was extended to different sections of the employees. The case that is advanced by the Respondent in the Counter Statement is that the Respondent had been experiencing financial crunch for some time and it was to ride over this difficulty that the benefits given as per the above settlements were proposed to be terminated. Even after issuing notice terminating the settlements, the workmen seem to have been getting overtime payment but for a reduced time only.

19. According to the Respondent the payment that is being made as per settlements under challenge are only payments made for overtime work. It is the further case of the Respondent that overtime wage is not part of the wages but is given on need basis only and therefore the benefit can be stopped at any time. Even now the workers are getting overtime wages on need basis even though not in the same measure as they were getting earlier, the Respondent has stated.

20. It is the case of the petitioner that even though the term used in the three settlements is overtime payment, it is in effect by way of allowance and therefore it cannot be

stopped as done by the Respondent. Before considering the question whether the benefit can be terminated by issuing a notice under Section-19(2) of the ID Act it is to be seen whether the amount that was received by the workmen is only overtime payment or allowance as claimed by them. There cannot be any doubt that it is as a special allowance that they were getting it though termed as overtime payment. This is clear even from the clauses in Ext.W1. By Clause-3 of Ext.W1 the Special Allowance that was earlier paid to a section of workers has been withdrawn and it was as a substitute that they were provided with one hour fixed time at single hourly rate w.e.f. 01.07.1992. Clause-5 of Ext.W1 makes it more clear that the payment as per Clause-4 was only by way of allowance. As per Clause-5, in the case of workers of pilotage and mooring sections, two sections of workers covered under Clause-4 also, if and when they are detained for overtime work beyond the scheduled duty hours they would be paid normal overtime in addition to the one hour fixed overtime at single hourly rate referred to in Clause-4. Thus it is clear from Clause-5 that if the overtime payment as per the said clause was to be available to the concerned workers they should have worked beyond the scheduled duty hours. This itself would show that payment as per Clause-4, though termed as overtime payment, was payable even though the workers worked only for 8 hours which is the normal duty hours.

21. It is clear from the evidence given by MWs 1 and 2 also that the amount termed as overtime payment was being paid even though the workers worked only for 8 hours, for those days in which they had attended work. MW1 has admitted during his cross-examination that overtime payment was given for 8 hours of work done by them and they did not do any extra work beyond 8 hours. MW1 also admitted that the allowance paid before Ext.W1 also was for the work done for 8 hours by the employees. It could be read from the evidence of MW2 also that the workers were receiving payment as overtime for the normal duty hours during which they have worked. So the feeble contention in the Counter Statement that the payment was as overtime wages will not hold good. Though couched under the term "Overtime Payment", the amount was being paid to the workers considering the hazard nature of work done by them and it is only an allowance.

22. Now the question to be considered is whether the three settlements got terminated by the notices. As stated, the case of the Respondent is that the Port Trust had landed in financial difficulties and it was only to overcome this difficulty the decision to terminate the settlements have been taken. The main business of the Port was of Irion ore, limestone, coal, etc. A Green Bench of the Madras High Court passed Ext.M8 order on 11.05.2011 directing that only clean cargoes are to be brought to the Chennai Port and the dusty cargoes like iron ore, coal. etc. should be distributed through Ennore Port only. Consequently, iron ore and coal which were so far brought through Chennai Port were directed to Ennore Port and this resulted in loss of business in Chennai Port is the case of the Respondent. According to the Respondent, in such contingency payments as per the three settlements could not be made and this has resulted in issuing notice under Section-19(2) of the ID Act proposing to terminate the settlement. The Respondent has also produced Ext.M9 the administration report of the Port Trust for the year 2013-2014. Page-19 of Ext.M9 gives the details of the container traffic of the Port for years 2009-2010 to 2013-14. The graph showing the total traffic from Chennai Port during the years from 2009-10 to 2013-14 is shown in Page-23 of the Report. The graphs of course shows the reduction in the amount of traffic handled by the Port.

23. According to the Respondent it is within their power to impose the restrictions because of the reduced traffic of the Port. The counsel has relied upon the decision in S. MERRITONE ZACHARIRAJ VS. GOVERNMENT OF TAMILNADU AND OTHERS reported CDJ 2008 MHC 3607 in support of his argument. It was a case where teachers who were appointed on a consolidated pay on sanctioned post had claimed that they are entitled to regular pay. The action of the Government of Tamil Nadu in making consolidated pay in the particular circumstances of financial crunch of the government was upheld by the Hon'ble High Court of Madras. However, the position of law laid down in the above case will not come to the aid of the Respondent in the present case. It was a case where the very posting of the teachers was on a consolidated pay. They had to work for 5 years on this consolidated pay and thereafter they were to be brought into the regular pay scale. The teachers have entered into specific agreement with the Government that they would work on consolidated pay. It is not the case here. The Petitioner Union and the Respondent have entered into settlements under Section-18(1) of the ID Act by which certain benefits were conferred on the workmen.

24. The question is whether the benefits conferred could have been withdrawn by issuing notice under Section-19(2) of the ID Act. It is pointed out by the counsel for the petitioner that even after issue of notice under Section-19(2) of the Act the terms of the settlement are to be complied with until another settlement is entered into between the parties. The counsel has relied upon the decision of the Apex Court in the LIFE INSURANCE COPRORATION OF INDIA VS. D.J. BAHADUR AND OTHERS reported in 1981 1 LLJ 1. The Apex Court has held in this that on issue of notice under Section-19(2) the parties are no longer bound by the industrial status quo in respect of matters covered by the settlement and they are at liberty to seek an alteration of the contract. At the same time it was further held that until altered the contract continues to govern the relations between the parties in respect of the terms and conditions of service. It was not

enough for the Respondent to issue notice under Section-19(2) of the ID Act. They should have taken steps to have an altered settlement to suit their condition. Until there is a settlement with new terms and conditions the earlier settlements are to prevail and the workmen are entitled to the benefits under those settlements. So it was not proper on the part of the Respondent to cut short the benefits that the workmen were availing as per the three settlements in question. The workmen are entitled to have the benefits under the three settlements continued until another settlement is arrived at. The points are found in favour of the petitioner.

Points in ID 67/2014

25. The dispute in this ID is raised by the same Union on behalf of employees working in the Diesel Loco Service Station at Marshalling Yard in Chennai Port. While discussing the evidence in Id 65/2014 it has been stated that the Petitioner Union and the Respondent had entered into three settlements by which payment was made in the name of overtime payment, which is already found to be an allowance. The employees working in the Diesel Loco Service Station at Marshalling Yard also had demanded for incentive on account of the hazardous nature of work done by them and the Board of the Respondent is said to have approved the incentive scheme in the year 1997 itself. The same was sent to the Govt. for approval but it was pending with the Government. It was in this circumstance the Respondent agreed to give 4 hours overtime wages on Saturdays in lieu of incentives. It is not disputed by the Respondent that these workmen were receiving payments termed as overtime wages as claimed by them. While terminating the settlements referred to in ID 65/2014 the Respondent reduced the overtime wages the workmen were so far receiving to 1.5 hrs. from January 2014. Then it was totally discontinued from June 2014. The case that is advanced by the Respondent in the Counter Statement is that the concerned workers had been working overtime for 4 hours on Saturdays and it is accordingly the payment was made. It is stated in the Counter Statement that the working time on Saturdays is from 0730 AM to 1230 PM and thereafter the workmen have been working for four more hours for which overtime wages has been paid. MW2 has admitted during his cross-examination that earlier the overtime payment of 4 hours was made for the work that was done for the normal 8 hours. He also stated that this overtime allowances was given based on policy decision. He further stated that at present overtime allowance is paid only for extra work done after 8 hours. Thus it could be seen from the admission made by MW2 also that earlier the workers were getting wages for 4 hours more on Saturdays apart from the normal wages received by them though they worked only for 8 hours on Saturdays also. The case of the Petitioner is that they are actually receiving the amount by way of incentive. The Respondent did not produce any document to show that the working hours on Saturday is from 0730 AM to 1230 PM or that the workers were working for 4 more hours after this on Saturdays. The admission by MW2 belies the case of the Respondent that the payment is by way of overtime wages. In fact it is not probable that the workmen who were doing work so hazardous in nature would have been asked to work for 4 extra hours on a single day. The workers of Diesel Loco Service Station were in fact getting the extra amount by way of incentive because of the hazardous work done by them only. So the amount received by them is part of the wages and not payment for overtime work done by them.

26. The case of the petitioner is that the incentive that they were so far receiving were discontinued by the Respondent without issuing notice under Section-9A of the ID Act. Initially payment was made for 1.5 hours for a short period and then it was discontinued totally. According to MW2 now payment is being made only if extra work is done. The discontinuance of the incentive for the workers should not have been without notice under Section-9A of the ID Act. Section-9A states that an employee who proposes to effect any change in the conditions of service applicable to a workman in respect of any matters specified in the 4th Schedule of the Act shall not effect such change without giving notice in the prescribed manner. As per the 4th Schedule change in compensatory and other allowances (Item-3 of the schedule) and withdrawal of any customary concession or privilege or change in usage (Item-8 of the schedule) require notice under Section-9A of the Act. The payment that was received by the concerned workmen was a privilege enjoyed by them and it was in the nature of allowance and not overtime payment. So the Respondent was not justified in discontinuing payment of the amount in question without notice under Section-9A of the Act. The Respondent is bound to restore the said benefit to the concerned workmen. The points are found in favour of the petitioner.

In view of my findings above, an award is passed as below:

In ID 65/2014 the Respondent is directed to restore the benefit of allowance by way of overtime to the employees covered under the terms of the settlements entered under Section-18(1) of the ID Act on 21.10.1992, 08.03.2001 and 19.03.2001, within a month of the publication of the award.

In ID 67/2014 the Respondent is directed to restore the benefit of allowance by way of overtime to the technicians in the Diesel Loco Service Station at Marshalling Yard, within a month of the publication of the award.

The references are answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 4th February, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner : WW1, Sri D. Purushothaman

For the 2nd Party/ Management : MW1, Sri A.V. Dravidaveeran
MW2, Sri K. Subramani

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	21.10.1992	Settlement u/s 18(1) of ID Act
Ext.W2	02.08.1999	Award of the Arbitrator
Ext.W3	19.02.2000	Settlement u/s 18(1) of ID Act
Ext.W4	08.03.2001	Settlement u/s 18(1) of ID Act
Ext.W5	19.03.2001	Settlement of u/s 18(1) of ID Act
Ext.W6	19.04.2006	Award of the Tribunal
Ext.W7	16.03.2013	Notice u/s 19(2) of ID Act
Ext.W8	20.03.2013	Letter from the Petitioner Union to the Respondent
Ext.W9	19.03.2013	Letter to the Petitioner Union
Ext.W10	20.03.2013	Notice u/s 19(2) of ID Act
Ext.W11	20.03.2013	Notice u/s 19(2) of ID Act
Ext.W12	20.03.2013	Notice u/s 19(2) of ID Act
Ext.W13	-	Strike Notice
Ext.W14	19.08.2013	Minutes of Bilateral Discussion
Ext.W15	23.08.2013	Letter from the Respondent
Ext.W16	13.09.2013	Conciliation Proceedings
Ext.W17	13.09.2013	Conciliation Proceedings
Ext.W18	02.01.2014	Letter from the Petitioner Union with Annexure to Strike Notice
Ext.W19	07.01.2014	Letter from the Petitioner Union
Ext.W20	02.01.2014	Letter from the Respondent with Annexure
Ext.W21	14.02.2014	Letter from the Petitioner Union
Ext.W22	25.06.2014	Letter from the Respondent
Ext.W23	28.10.2014	Letter from the Petitioner Union with Salary Statement
Ext.W24	28.10.2014	Conciliation Notice
Ext.W25	-	Letter from the Respondent
Ext.W26	01.12.1999	Records Notes of discussion
Ext.W27	20.02.2006	Office Order
Ext.W28	09.03.2006	Letter from the Respondent
Ext.W29	05.01.2009	Letter from the Respondent

On the Management's side

Ex.No.	Date	Description
Ext.M1	10.08.2015	Authorization letter
Ext.M2	10.01.2014	Memorandum of 18(1) of ID Act 1947
Ext.M3	31.01.2014	Addendum of MOS
Ext.M4	12.06.2014	Closure of ID (conciliation meeting)
Ext.M5	23.06.2014	Chairman's Order
Ext.M6	-	Overtime wages calculation rule
Ext.M7	04.08.2015	Authorization letter
Ext.M8	11.05.2011	Green Bench Order
Ext.M9	2013-2014	Administration Report of Chennai Port Trust.

नई दिल्ली, 22 मार्च, 2016

का.आ. 591.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 99/09) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-12011/96/09-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 591.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/09) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 22.03.2016.

[No. L-12011/96/09-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/99/09

General Secretary,
Dainik Vetan Bhoti Bank Karmchari Sangthan,
Central Office, F-1, Tripti Vihar,
Ujjain (MP) ...Workman/Union

Versus

Managing Director,
Central Bank of India,
Central Office, Chandramukhi,
Mumbai ...Management

AWARD

Passed on this 1st day of February, 2016

1. As per letter dated 24-11-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/96/09-IR(B-II). The dispute under reference relates to:

> "Whether Shri Sandip Kumar Mishra, Ex-peon is entitled for payment of difference of wages w.e.f. 19-9-2000 to December, 2006 as per the bipartite settlement? What relief he is entitled to get?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. The case of workman is that he was working as peon/ sub staff. From 1-9-09, he was engaged by Branch Manager. He was working for 8 hours per day. He completed more than 240 days continuous service. He was paid Rs. 740 per month and Rs. 20-30 per day. His services were terminated without notice on 31-12-06. He challenged his termination in R/55/09 which is pending. Workman claims that he was not paid skilled wages as per bipartite settlement No. 4 to 8. As per settlement 4, subordinate staff was entitled to pay scale of Rs.430-790. As per 5th settlement, he was entitled to Rs. 815-1510, as per 6th settlement- 1600- 3020, as per 7th settlement- 2750-5850, as per 8th settlement 4060-7560. He is entitled to pay scale as per above settlement. 2nd party management not paid pay scale as per above settlements is punishable under Section 29 of ID Act. On such ground, workman claimed difference of wages of pay scale with interest.

3. 2nd party management filed Written Statement opposing claim of workman. preliminary objection is raised that Shri R.Nagwanshi so called General secretary of Daily Wage Bank Empoyees Union is not competent to represent the workman. The reference is not tenable. 2nd party denies that workman was appointed on 1-9-00 as peon. 2nd party denied that workman worked more than 240 days during each of the calendar year. Workman worked as casual labour on temporary need basis, he was paid bonus. As per payment of Bonus Act, Ist party workman is not entitled to be treated as permanent employee. It is denied that workman is entitled to wages as per bipartite settlement as he was not regular employee of the Bank on pay role.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Sandip Kumar Mishra, Ex-peon is entitled for payment of difference of wages w.e.f. 19-9-2000 to December, 2006 as per the bipartite settlement?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. The terms of reference pertains to claim of workman of pay scale as per Bipartite Settlement No. 4 to 8. The details of the settlement are given in Para-4 of the statement of claim. The documents produced by workman Exhibit W-1 to W-3 are admitted by management's witness. Exhibit W-1 shows that in reply submitted by ALC, Bilaspur, 2nd party had contented that Ist party workman was working as casual employee, he was not regular employee of the Bank. Workman was paid amount of Rs.607 for the year 2000 to 2001. Document Exhibit W-2 shows the amount of Rs. 2802 was paid to Ist party as bonus by Bankers Cheque dated 18-8-03. Exhibit W-3 is copy of Bank Account of workman. The payment of bonus is not disputed by 2nd party. The copies of the settlements are not proved by valid evidence.

6. Workman filed affidavit of his evidence supporting his claim but he failed to appear for his cross-examination.

7. Management's witness Shri T.D.Rao in his affidavit of evidence says that workman had not worked more than 240 days, he worked as casual labour on temporary need basis only. That R/55/09 was closed as per order dated 14-2-2013. Management's witness in his cross-examination says he was not posted in Semar Cell, Belpan branch during 2000 to 2006. He had not visited said branch before filing affidavit of evidence. He had not taken information from the Branch Manager. Attendance Register of workman was not maintained. Appointment letter was not given to him. Workman was paid wages every month but he was not aware of the rate of wages paid to workman. The evidence of workman is not cogent and clear whether the settlements 4 to 8 are applicable to the casual employees engaged in the Bank. The authentic copies of the settlements are not proved by valid evidence. Therefore I record my finding in Point No.1 in Negative.

8. In the result, award is passed as under:-

(1) The workman is not entitled difference of wages as per Bipartite Settlements.

(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 22 मार्च, 2016

का.आ. 592.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 230/99) को प्रकाशित करती है जो केन्द्रीय सरकार को 22.03.2016 को प्राप्त हुआ था।

[सं. एल-12012/23/99-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 22nd March, 2016

S.O. 592.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 230/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Central Bank of India and their workmen, received by the Central Government on 22.03.2016.

[No. L-12012/23/99-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/230/99

Shri Ashok Kumar Maratha,
116, Tatanagar Gali No.3,
Ratlam ...Workman

Versus

Regional Manager,
Central Bank of India,
Regional Office, Shastri Nagar,
Ratlam ...Management

AWARD

Passed on this 1st day of February, 2016

1. As per letter dated 31-5-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/23/99/IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Regional Manager, Central Bank of India in terminating the services of Shri Maratha w.e.f. 1993 is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/2 to 2/11. Case of workman is that he was working as attendant in Central Bank of India, Tripolia Gate Branch, Ratlam from 1993. He was paid bonus in 1994. He was regularly working against vacant post. In 1982, he worked for 67 days in 1982, 163 days in 1983 and 59 days in 1993. Despite of his good service, his services were verbally terminated without any reasons. That 2nd party No.1 issued letter dated 1-1-1993 giving the details of his working. That he was deployed against regular vacancy. That he was not regularised in permanent vacancy. Bank management acted arbitrarily not taking cognizance of his bonafide work as attendance. The Central Bank of Idia Rules and Regulations pertain to absorption of temporary employees were prohibited by the management. Clause 3.1, 3.2 of the Regulations were not followed. Workman was not absorbed as per rules and regulations. Ist party workman alleges gross malafide and in humiliation attitude adopted by the management.

3. Ist party workman reiterates that he worked more than 60 days artificial breaks were shown by the 2nd party No.1,2 in his service. Workman was exploited by the Bank management. He was not paid equal salary of equal work. He was doing work in the postal department of the Bank. Dispatching the RPAD to GPO at GPO Ratlam, also distributing local post. He belongs to SC ST cadre. His services are terminated in violation of Section 25-F of ID Act. Bank management will with contradiction of rules and regulations of absorption in service. On such grounds, workman prays to cancel verbal order dated 19-4-87, his services be regularised with payment of back wages.

4. 2nd party filed Written Statement at Page 5/1 to 5/4 opposing claim of the workman. Case of 2nd party is that the recruitment of subordinate cadre in the banks is made as per guidelines issued by Government of India, Ministry of Finance. As per the guidelines issued by Government and high percentage of unemployment in the country, it was advised to all the nationalized banks that all recruitments in the subordinate cadre should be made only through employment exchanges. The Bank as a matter of fact, had been following this policy/ guidelines of Government of India and had been calling persons to be considered for recruitment in the subordinate cadre through local employment exchange only. Workman was engaged by the Bank as casual temporary employee during leave vacancy of permanent employees. It doesnot amount to retrenchment. His non-engagement is covered under Section 2(oo)(bb) of ID Act. workman was paid bonus as payable to casual worker. He has not completed 240 days in preceding 12 calendar months. Violation of

Section 25-F of ID Act is not denied. As per 2nd party, working days of workman are shown 67 in 1982, 93 in 1983 and 59 days in 1993. By working of such number of days, workman was eligible to be called for recruitment test as per circular dated 20-9-93. No recruitment test of sub staff was held by the Bank at Ratlam. No application was called for recruitment. The recruitment test is conducted as per instructions of Central/Zonal office of the Bank. Ist party workman is not eligible for absorption on permanent post. He not completed 240 days working in any of the calendar years. Management has not violated Section 25-F of ID Act. workman was not permitted. Workman is not entitled for regularization in service.

5. Ist party workman submitted rejoinder at Page 6/1 to 6/2 reiterating contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of Regional Manager, Central Bank of India in terminating the services of Shri Maratha w.e.f. 1993 is justified?	Termination of service of Ist party workman by management is not proved.
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. The term of reference pertains to legality of termination of services of Ist party workman. The claim for regularization of workman in service is not included in the terms of reference. As per pleadings in statement of claim, workman had worked for 67 days in 1982, 163 days in 1983, 59 days in 1993. 2nd party has contented that workman was not appointed against permanent vacant post. He was engaged as casual temporary employee during leave period of permanent staff.

8. Workman has produced documents Exhibit W-2 working days of Ist party workman are shown as claimed by Ist party workman Exhibit W-1 produced by workman is circular dated 20-9-93 pertaining to the absorption of temporary employees as term of reference doesnot pertain to absorption of temporary employees as term of reference doesnot pertain to the claim for regularization of workman. Said document is not relevant for deciding claim pertaining to legality of termination of his services.

9. Affidavit of evidence is filed by workman claiming that he worked for 67 days in 1982, 103 days in 1983 & 59 days in 1993. In his cross-examination, workman denies that there is practice in the Bank not to allow working more than 60 days. He denies that he not worked for 103 days in 1993. He denies that he was not called for work in 1993. He denies that as per circular dated 20-9-93, he not submitted any application as he was not fulfilling eligibility for absorption. He was not called for interview. As term of reference doesnot include claim for regularization of service by workman, evidence of the workman discussed above has no relevance to the legality of termination of his service.

10. Workman died during pendency of reference, his widow Hemlata Maratha filed affidavit of her evidence. In her cross-examination, she says that she has little knowledge about working of her husband in the Bank. Her husband has left her with 3 daughters after his death. Her evidence has no relevance to the termination of workman.

11. Evidence of management's witness Manoharlal is on the point that workman was engaged as casual temporary employee. That workman had not worked for 67 days in 1982, 103 days in 1983, 59 days in 1993. The cross-examination of management's witness shows that he was not posted in Bajaj Khana, Ratlam during 1982 to 1983, 1993 claiming ignorance about certificate dated 20-9-93 Exhibit W-1. On his submission, Exhibit W-1, W-2 were admitted in evidence. The workman was not paid retrenchment compensation as he was not regular employee of the Bank. He claims ignorance whether after interview in 1993, Shri Rajesh and Narayan were absorbed in service of the Bank.

12. As discussed above, the claim for regularization of workman is not included in term of reference. The legality of termination has been referred in the term of reference. The evidence on record is clear that workman had not worked for more than 240 days during any of the year therefore protection of Section 25-F of ID Act is not available to the workman. There is no question of regularization of service of Ist party workman as per the circular dated 20-9-93 as same point is not included in the terms of reference. For above reasons, I hold that termination of workman in violation of Section 25-F of ID Act is not established.

13. In the result, award is passed as under:

(1) The termination of service of Ist party workman by management is not established.

(2) Workman or his LR is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 23 मार्च, 2016

का.आ. 593.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एमएनआईटी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम

न्यायालय, जयपुर के पंचाट (संदर्भ सं. 47/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 23/03/2016 को प्राप्त हुआ था।

[सं. एल-42012/78/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 23rd March, 2016

S.O. 593.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in the Annexure in the Industrial Dispute between the management of Malviya National Institute of Technology and their workmen, received by the Central Government on 23/03/2016.

[No. L-42012/78/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 47/2006

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. L-42012/78/2005–IR (CM-II) दिनांक 28/04/2006

Shri Ramesh Saini S/o. Shri Bhorilal Saini,
Plot No. 48, Mansinghpura,
Hari Marg, Tonk Road,
Distt.- Jaipur (Rajasthan)

v/s

1. The Director,
Malviya National Institute of Technology,
Jawaharlal Nehru Marg,
Malviya Nagar,
Jaipur (Rajasthan)

प्रार्थी की तरफ से : श्री कमलेश शर्मा – प्रतिनिधि

अप्रार्थी की तरफ से : श्री लक्ष्मण सिंह कच्छावा – एडवोकेट

: पंचाट :

दिनांक : 29.01.2016

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उप–धारा 1 खण्ड (घ) के अन्तर्गत दिनांक 28.04.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

2. "Whether the action of the management of Malaviya National Institute of Technology, Jaipur in terminating Sh. Ramesh Saini, S/o Sh. Bhorilal Saini, Lab Attendant w.e.f. 29. 11. 2003 from services is legal and justified? If not, to what relief the workman is entitled to and from which date?"

3. स्टेटमेन्ट ऑफ क्लेम के अनुसार संक्षिप्ततः प्रार्थी श्रमिक का कथन है कि उसकी नियुक्ति विपक्षी संस्थान में चतुर्थ श्रेणी कर्मचारी के पद पर अस्थायी तौर पर दिनांक 1.6.95 के आदेश से दिनांक 1.6.95 को हुई थी। दिनांक 21.2.95 तक प्रारम्भिक तौर पर प्रार्थी प्रोजेक्ट इम्पेक्ट पर लगाया गया था लेकिन उसकी सेवायें तथा वेतन समय–समय पर बढ़ाया गया। "प्रोजेक्ट इम्पैक्ट" समाप्त हो गया परन्तु उसके बाद भी विपक्षीगण दिनांक 28.11.2003 तक प्रार्थी से कार्य लेते रहे, इससे जाहिर है कि विपक्ष को प्रार्थी की सेवाओं की आवश्यकता थी लेकिन औद्योगिक विवाद अधिनियम 1947 में प्रदत्त अधिकारों से वन्चित रखने के लिए प्रारम्भ में प्रार्थी को प्रोजेक्ट पर दिखाया गया लेकिन वास्तव में कार्य मालवीय राष्ट्रीय प्रौद्योगिक संस्थान, जयपुर में लिया गया।

4. विपक्षीगण और श्रमिक ने सीधा मालिक और श्रमिक का सम्बन्ध था। सन् 2003 में विपक्षी ने अस्थायी श्रमिकों की सेवायें एक बिचौलिये कान्ट्रेक्टर के माध्यम से दर्शायी जबकि वास्तव में प्रार्थी श्रमिक और विपक्षी संख्या 3 के बीच कोई मालिकाना सम्बन्ध नहीं रहा और प्रार्थी श्रमिक विपक्षी संख्या 1 के संस्थान में लेब अटेण्डेट के रूप में कार्य करता रहा।

5. आगे प्रस्तर 3 में कथन है कि पूर्व में राजस्थान विधान सभा द्वारा पारित रफ़्तर एक्ट 1999 के प्राविधान 3.7 और 11 की वजह से नियमित नियुक्तियों पर प्रतिबन्ध था तथा अस्थायी श्रमिकों को नियमित करने के प्राविधाान भी बाधित थे इसलिये आश्वासन के बावजूद विपक्षी संख्या 1 ने प्रार्थी श्रमिक की सेवायें नियमित नहीं की जबकि प्रार्थी को लेब अटेण्डेट के पद पर कार्य करने का आठ साल का अनुभव प्राप्त हो चुका था।

6. प्रस्तर 4 में यह कथन है कि माननीय राजस्थान उच्च न्यायालय की जोधपुर पीठ ने भवानी सिंह बनाम राज्य के मामले में रफ़्तर एक्ट के प्राविधानों को असंवेधानिक घोषित कर दिया। उसके बाद प्रार्थी श्रमिक ने विपक्षी एक के रजिस्टार से निवेदन किया कि प्रार्थी को विपक्षी के यहां कार्य करते हुए आठ साल हो गया हैं अतः उसे नियमित किया जाए। आगे याची का कथन है कि प्रार्थी को नियमित करने के बजाय बिना कोई कारण बतायें निर्देशक ने मौखिक आदेश दिनांक 29.12.2003 के द्वारा सेवा से यह कहकर निकाल दिया की आपकी सेवाओं की आवश्यकता नहीं है।

7. प्रस्तर 5 के कथन के अनुसार विपक्षी के यहां लेब अटेण्डेट के 26 पद स्वीकृत हैं जहाँ निरन्तर कार्य सम्पादन की आवश्यकता है और इसी कारण सन् 1995 से 29.11.2003 तक प्रार्थी को विपक्षी ने सेवा में बनाये रखा था। विपक्ष द्वारा की गयी सेवामुक्ति औद्योगिक विवाद अधिनियम की धारा 2 (आर.ए.) सपठित धारा 25 टी एवं शिड्यूल 5 के पद संख्या 10 का उल्लंघन है। सेवामुक्ति के पूर्व विपक्ष द्वारा प्रार्थी को न कोई नोटिस दी गयी और न ही नोटिस के बदले वेतन का भुगतान किया गया और न ही छंटनी मुआवजा दिया गया। इस प्रकार प्रार्थी की सेवा समाप्ति 25–एफ के उल्लंघन में की गयी और प्रार्थी की सेवा समाप्ति से पूर्व कोई वरिष्ठता सूची नहीं प्रकाशित की गयी जो

औद्योगिक विवाद नियमावली 1957 के नियम 77 का उल्लंघन है। विपक्षी का संस्थान उद्योग की परिभाषा से आच्छादित है तथा प्रार्थी की सेवामुक्ति धारा 2 (ओ.ओ.) में वर्णित छंटनी की परिभाषा से आच्छादित है, अतः प्रार्थी की सेवामुक्ति को अवैध घोषित किया जाय और समस्त लाभ सहित प्रार्थी को सेवा मे पुनर्स्थापित करने का आदेश पारित किया जाय।

8. याचिका के प्रस्तर 9 में प्रार्थी ने यह उल्लेख किया है कि विपक्षी संख्या 1 के निर्देशन में डाक्टर एम.राय की कमेटी ने दिनांक 28.10.2003 और 30.10.2003 की मिटिंग में निर्णय लिया है जिससे विपक्षी के यहां कार्य की आवश्यकता जाहिर होती है जिसमें यह कहा गया है कि ठेकेदार सेवार्थी श्रमिक उपलब्ध कराने में असमर्थ है तो समाचार पत्र में नोटिस प्रकाशित करवाकर ठेकेदारी पर नियुक्तियां की जाय ताकि कार्य सम्पादन में अड़चन न आयें। प्रार्थी का कथन है कि उक्त परिस्थिति में उसकी सेवामुक्ति स्वतः ही अनुचित है तथा इससे विपक्ष की मनमानी कही जा सकती है।

9. विपक्ष की तरफ से प्रार्थी की याचिका के विरूद्ध जवाब में याचिका के प्रस्तर 1,2 और 3 में प्रस्तुत कथन के सम्बन्ध में कहा गया है कि कोई विवाद नहीं है। प्रस्तर 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 और 15 के कथन को अस्वीकार किया गया है। आगे यह कथन है कि प्रार्थी को विपक्षी संस्थान ने कभी भी चतुर्थ श्रेणी कर्मचारी के अस्थायी पद पर कोई नियुक्ति नहीं दी और न ही नियुक्ति पत्र जारी किया। विपक्षी संस्थान ने प्रार्थी को कभी भी वेतन का भुगतान भी नहीं किया इसलिये प्रार्थी का यह कहना असत्य एवं मनगंढत है कि उसके वेतन से नियमानुसार कटौती की जाती थी।

10. उल्लेखनीय है कि याची पक्ष ने याचिका में किसी भी प्रस्तर में यह उल्लेख नहीं किया है कि उसे विपक्ष द्वारा वेतन का भुगतान किया जाता था और वेतन से नियमानुसार कटौती की जाती थी। यह भी उल्लेखनीय है कि वादोत्तर में याचिका के प्रस्तर 1 लगायत 15 के कथन को अस्वीकार/अविवादास्पद बताया गया है जबकि याची द्वारा याचिका में केवल 11 प्रस्तरों में अपना कथन समाप्त किया गया हैं। याची पक्ष द्वारा धारा 25 एच औद्योगिक विवाद अधिनियम के उल्लंघन का कोई मामला याचिका में नहीं उठाया गया है परन्तु वादोत्तर के प्रस्तर 9 में इस सम्बन्ध में जवाब नकारात्मक रूप में प्रस्तुत किया गया है।

11. आगे वादोत्तर में यह कथन है कि प्रार्थी को विपक्षी संस्थान द्वारा कभी भी सेवा में नहीं लिया गया अतः उसे नियमित रूप से भुगतान करने का प्रश्न नहीं उत्पन्न होता है। प्रार्थी को नियुक्ति नहीं प्रदान की गयी इसलिये सेवामुक्ति का प्रश्न नहीं उठता हैं। प्रार्थी की सेवाओं का अप्रार्थी संस्थान से कोई सीधा सम्बन्ध नहीं था अतः प्रार्थी को कोई नोटिस या मुआवजा दिये जाने का प्रश्न नहीं उठता एवं प्रार्थी के मामले में औद्योगिक विवाद नियमावली 1957 के नियम 77 व 78 के प्राविधान लागू नहीं होते है। प्रार्थी का यह कहना गलत है कि उसने कभी विपक्षी संस्थान में 240 दिन कार्य किया है। प्रार्थी का यह कहना भी गलत है कि उसके हटाये जाने के बाद किसी नये व्यक्ति को संस्थान में रखा गया।

12. आगे विपक्ष का कथन है कि विपक्षी संस्थान में यदि काम लिया गया है तो किसी ठेकेदार के माध्यम से लिया गया था और ऐसे व्यक्ति धारा 2 'एस' के अनुसार कर्मकार की परिभाषा में नहीं आते है। यह भी कहा गया है कि अप्रार्थी संस्थान के साथ प्रार्थी ने सीधे रूप में कभी सेवायें नहीं दी और उसने कभी पूरे 240 दिन काम नहीं किये अतः प्रार्थी किसी अनुतोष को पाने का हकदार नहीं है तथा याचिका निरस्त होने योग्य है।

13. प्रारम्भिक आपत्ति में विपक्ष ने कहा है कि प्रार्थी ने याचिका में इस तथ्य को छिपाया है कि वह संस्थान द्वारा सेवा में नहीं लिया गया था बल्कि ठेकेदार के माध्यम से कुछ समय के लिये कार्य पर लिया गया था। विपक्षी संस्थान को सामान्यतः यदि किन्हीं सेवाओं की आवश्यकता होती है तो ठेकेदार द्वारा टेण्डर के माध्यम से सेवाये ली जाती है। टेण्डर के नियम व शर्तें ठेकेदार को स्वीकार होने पर उचित एवं निर्धारित सुरक्षा राशि संस्थान में जमा करवाकर नॉन–ज्यूडिशियल स्टाम्प पत्र पर एग्रीमेन्ट करवाया जाता है तत्पश्चात् किसी व्यक्ति की सेवा ली जाती है। जब भी अप्रार्थी संस्थान का कार्य समाप्त हो जाता है तो उक्त ठेकेदार को भुगतान की जाने वाली राशि रोक ली जाती है और इस प्रकार ठेकेदार द्वारा उक्त व्यक्ति की सेवाएं समाप्त कर दी जाती है।

14. जवाबुलजवाब में विपक्ष के कथन को अस्वीकार कर यह कहा गया है कि उसकी नियुक्ति किसी ठेकेदार के माध्यम से नहीं हुई थी बल्कि उसकी नियुक्ति कोआर्डिनेटर ने कन्सोलिडेटेड 832/– रू. के हिसाब से 1.6.1995 के आदेश से की थी और सेवाओं का विस्तार समय–समय पर विपक्ष द्वारा बिना किसी अवरोध के किया गया। प्रार्थी का किसी भी प्रकार ठेकेदार से कोई सम्बन्ध नहीं था और न ही ठेकेदार प्रार्थी का नियोजक था। जवाबुलजवाब के शेष कथन में याचिका के कथन की पुनरावृत्ति की गयी है।

15. याचिका के समर्थन में प्रार्थी पक्ष की तरफ से प्रार्थी श्री रमेश सैनी की शपथ–पत्र साक्ष्य में प्रस्तुत की गयी है। साक्षी की प्रतिपरीक्षा विपक्ष द्वारा की गयी है। प्रलेखीय साक्ष्य के रूप में याची पक्ष की तरफ से फिहरिस्त से उपस्थिति पंजिका की फोटोप्रति तथा प्रार्थी को कार्य पर लिये जाने से सम्बन्धित आदेश 1.6.1995 की फोटाप्रति प्रदर्श डब्ल्यू –1 एवं सेवा विस्तार से सम्बन्धित अन्य आदेश की फोटोप्रतियां प्रस्तुत है।

16. विपक्ष की तरफ से श्री सवाई सिंह केयर टेकर एम.एन.आई.टी. जयपुर की शपथ–पत्र साक्ष्य में प्रस्तुत की गयी है जिसकी प्रतिपरीक्षा याची पक्ष द्वारा की गयी है। प्रलेखीय साक्ष्य के रूप में विपक्ष द्वारा ''इकरारनामा अनुबन्ध की शर्तें'' दिनांकित 10.8.98 तथा विभिन्न व्यक्तियों को चेक द्वारा भुगतान वाउचर की फोटोप्रतियां प्रस्तुत है।

17. मैनें उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी तथा पत्रावली का सम्यक अवलोकन किया। याची पक्ष की तरफ से लिखित बहस भी प्रस्तुत हैं।

18. प्रार्थी पक्ष की तरफ से अपने समर्थन में निम्न विधिक दशष्टान्त प्रस्तुत किये गये है :–

(1) 1984 (1) एस.सी.सी पृष्ठ –509, गैमन इण्डिया लिमिटेड – अपीलार्थीगण बनाम निरन्जन दास – प्रत्यर्थीगण।

(2) 1984 (सप्ली.) एस.सी.सी पश्ष्ठ–428, हरी मोहन रस्तोगी– अपीलार्थी बनाम लेबर कोर्ट और अन्य–प्रत्यर्थीगण।

(3) 1994 डब्ल्यू.एल.आर. पृष्ठ–875, गिरीश कुमार जैन– अपीलार्थीगण बनाम यूनियन ऑफ इण्डिया– प्रत्यर्थीगण।

(4) 1989 (1) आर.एल.आर. पृष्ठ–156, यशवन्त सिंह– अपीलार्थी बनाम स्टेट ऑफ राजस्थान – प्रत्यर्थीगण।

(5) 1983 एफ.जे.आर. पृष्ठ–271, डी.के. यादव – अपीलार्थीगण बनाम जे. एम.ए. इण्डिया लिमिटेड – प्रत्यर्थीगण।

(6) 1981 (3) एस.सी.सी पृष्ठ–225, मोहन लाल– अपीलार्थी बनाम मेनेजमैन्ट ऑफ मैसर्स भारत इलेक्ट्रिक लिमिटेड – प्रत्यर्थीगण।

(7) 2015 (2) सुप्रीम टुडे पृष्ठ–166, जसमिर सिंह – अपीलार्थीगण बनाम स्टेट ऑफ हरियाणा – प्रत्यर्थीगण।

(8) 2 (जी) औद्योगिक विवाद अधिनियम, 1947 ।

19. विपक्ष की तरफ से प्रस्तुत दृष्टान्त : –

(1) (2001) 7 एस.सी.सी पश्ष्ठ –1, स्टील ऑथरिटी ऑफ इण्डिया लिमिटेड – अपीलार्थीगण बनाम नेशनल यूनियन वाटरफ्रान्ट वर्कर्स एवं अन्य– प्रत्यर्थीगण।

(2) (2004) 7 एस.सी.सी पृष्ठ–112, ए.उमरानी– अपीलार्थी बनाम रजिस्ट्रार, को ऑपरेटिव सोसायटीज और अन्य – प्रत्यर्थीगण।

(3) (2005) 1 एस.सी.सी पृष्ठ–639, महेन्द्र एल.जैन और अन्य–अपीलार्थीगण बनाम इन्दौर डेवलपमेंट अथारिटी और अन्य –प्रत्यर्थीगण

(4) (2005) 5 एस.सी.सी पृष्ठ–112, माध्यमिक शिक्षक परीषद्, यू.पी.–अपीलार्थी बनाम अनिल कुमार मिश्रा और अन्य–प्रत्यर्थीगण

(5) (2006) 1 एस.सी.सी पृष्ठ–667, स्टेट ऑफ यू.पी.–अपीलार्थी बनाम नीरज अवस्थी और अन्य–प्रत्यर्थीगण

(6) (2008) 2 एस.सी.सी पृष्ठ–552, चन्द्र शेखर आजाद कृषि एवँ प्रौद्योगिकी विश्वविद्यालय – अपीलार्थी बनाम यूनाइटेड़ ट्रेड्स कांग्रेस और अन्य– प्रत्यर्थीगण

20. प्रार्थी के विद्वान अधिवक्ता ने बहस की है कि विपक्षी संस्थान में प्रार्थी की नियुक्ति अस्थायी चतुर्थ श्रेणी कर्मचारी के रूप में हुई थी और प्रारम्भिक रूप में ''प्रोजेक्ट इम्पैक्ट'' में लगाया गया था जिसकी सेवायें समय–समय पर विस्तारित की गयी और ''प्रोजेक्ट इम्पैक्ट'' की समाप्ति के बाद भी प्रार्थी ने 28.11.2003 तक काम किया परन्तु प्रार्थी की सेवा नियमित नहीं की गयी। यह भी कहा है कि प्रार्थी को प्रयोगशाला सहायक के पद पर कार्य कराया गया तथा उस पर संस्था के निर्देशक तथा रजिस्ट्रार का सीधा नियन्त्रण था तथा उस पर किसी ठेकेदार का कभी नियन्त्रण नहीं था न ही वह ठेकेदार का कर्मचारी था। यह बहस भी की गयी है कि सेवासमाप्ति के पूर्व प्रार्थी को न कोई नोटिस दी गयी न नोटिस के बदले कोई भुगतान किया गया और न ही छंटनी मुआवजा अदा किया गया। इस प्रकार प्रार्थी की सेवामुक्ति धारा 25 (एफ) औद्योगिक विवाद अधिनियम 1947 के उल्लंघन में की गयी। यह भी कहा गया है कि सेवामुक्ति के पूर्व कोई वरिष्ठता सूची नहीं बनायी गयी इसलिये नियम 77 का उल्लंघन किया गया तथा प्रार्थी के साथ धारा 2(आरए) के अन्तर्गत परिभाषित अनुचित श्रम व्यवहार किया गया इसलिए प्रबन्धन अनुचित श्रम व्यवहार का भी दोषी है।

21. विपक्षीगण के विद्वान प्रतिनिधि की तरफ से यह बहस की गयी है कि प्रार्थी श्री रमेश सैनी विपक्षीगण के कर्मचारी नहीं थे, न तो विपक्ष द्वारा प्रार्थी को कोई नियुक्ति–पत्र जारी किया गया और न हीं सेवामुक्त किया गया, इसलिये विपक्षीगण द्वारा औद्योगिक विवाद अधिनियम की किसी भी प्राविधान का उल्लंघन नहीं किया गया है। यह भी कहा गया है कि प्रार्थी की संस्थान में नियुक्ति के सम्बन्ध में न कोई विज्ञापन निर्गत किया गया और न हीं किसी चयन प्रकिया का अनुसरण किया गया अतः प्रार्थी का यह कहना पूर्णतया गलत है कि उसकी नियुक्ति अस्थायी चतुर्थ श्रेणी कर्मचारी के रूप में संस्थान में की गयी। यह बहस भी की गयी है कि विपक्षी के संस्थान में प्रार्थी की सेवायें ठेकेदार के माध्यम से केवल ''प्रोजेक्ट इम्पैक्ट'' के उद्देश्य से ली गयी थी और प्राजेक्ट के अस्तित्व में बने रहने तक सीमित थी और प्रोजेक्ट की समाप्ति के बाद प्रार्थी की सेवायें उसके आगे विस्तारित की जानी विधिक रूप से अनुमन्य नहीं थी। इसके विरूद्ध प्रार्थी के विद्वान प्रतिनिधि की तरफ से यह बहस की गयी है कि ठेकेदार के जरिये प्रार्थी की सेवायें विपक्षी संस्थान को उपलब्ध कराये जाने के सम्बन्ध में कोई प्रलेखीय या मौखिक साक्ष्य पत्रावली पर नहीं है।

22. पक्षकारों के अभिवचनों तथा प्रस्तुत बहस से निम्न विवाद्यक निस्तारण हेतु अवतरित होता है :–

1 क्या प्रार्थी की विपक्षी संस्थान में चतुर्थ श्रेणी कर्मचारी के रूप में नियुक्ति की गयी या विपक्ष द्वारा संस्थान में प्रार्थी की सेवायें ठेकेदार के माध्यम से ली जाती थी जो ''प्रोजेक्ट इम्पैक्ट'' की अवधि तक सीमित थी ?

23. प्रार्थी के विद्वान प्रतिनिधि द्वारा न्यायाधिकरण का ध्यान कोआर्डिनेटर ''प्रोजेक्ट इम्पैक्ट'' के आदेश दिनांक 1.6.95 (प्रदर्श W/1) की तरफ आकृष्ट कर यह बहस की गयी कि प्रदर्श W/1 प्रार्थी की नियुक्ति पत्र है। विपक्षी साक्षी श्री सवाई सिंह के समक्ष भी प्रतिपरीक्षा में प्रदर्श W/1 को रखकर सवाल पूछे गये है जिसके सम्बन्ध में उन्होने कहा है कि यह सही है कि प्रदर्श W/1 एम.एन.आई.टी. जयपुर द्वारा निर्गत किया गया है और यह आदेश श्री रमेश सैनी की नियुक्ति से भी सम्बन्धित है। प्रदर्श W/1 के अवलोकन से यह प्रकट है कि 1 जनवरी, 1995 के आदेश प्रदर्श W/1 के माध्यम से 2 व्यक्तियों को कोआर्डिनेटर ''प्रोजेक्ट इम्पैक्ट'' द्वारा विशुद्ध रूप से अस्थायी आधार पर ''प्रोजेक्ट इम्पैक्ट'' के लिए कार्य पर लगाया (engage) गया है। इन दोनों व्यक्तियों में क्रमांक 2 पर श्री रमेश सैनी प्रार्थी को रूपया 832/ पर रखा गया है और ''प्रोजेक्ट इम्पैक्ट'' की कम्प्यूटर स्ट्रीम में लगाया गया है और श्री संतोष कुमार सक्सेना को इलेक्ट्रानिक स्ट्रीम में लगाया गया है। श्री संतोष

कुमार सक्सेना को आदेश प्रदर्श W/1 उनके एम.एन.आई.टी. परिसर में स्थित आवास संख्या एस–25 पर भेजा गया है। श्री संतोष कुमार सक्सेना के लिए भी पारिश्रमिक 832/– रूपया ही है। श्री संतोष कुमार सक्सेना को याची पक्ष द्वारा साक्ष्य में नहीं प्रस्तुत किया गया है जिससे प्रार्थी के कथन को समर्थन मिले कि याची तथा श्री संतोष कुमार को विपक्ष द्वारा कोई नियुक्ति दी गयी। श्री सवाई सिंह ने यह नहीं कहा है कि प्रदर्श W/1 नियुक्ति पत्र है बल्कि सिर्फ यह कहा है कि प्रदर्श W/1 प्रार्थी की नियुक्ति से भी सम्बन्धित है। उक्त स्थिति से यह स्वतः स्पष्ट है कि प्रदर्श W/1 नियुक्ति पत्र नहीं है बल्कि कार्य आवंटन आदेश है जिसे प्रार्थी द्वारा नियुक्ति पत्र कहा गया है। इसी सन्दर्भ में उल्लेखनीय है कि स्वंय प्रार्थी ने प्रतिपरीक्षा में यह कहा है कि यह सही है कि उसकी वेतन 832/ रूपये एकमुश्त निर्धारित थी तथा उसकी नियुक्ति के पूर्व कोई विज्ञप्ति अखबार में नहीं निकाली गयी थी, न उसकी लिखित परीक्षा हुई थी न उसका साक्षात्कार हुआ था। यह भी कहा है कि उसका सिर्फ बायोडाटा लिया गया था तथा उसे जब भी लगाया गया "प्रोजेक्ट इम्पैक्ट" के पद पर कार्य पर लगाया गया तथा उसको नियुक्ति पत्र दिये गये थे और नियुक्ति पत्र छः माह की अवधि के लिए दिये जाते थे। आगे साक्षी ने स्वंय यह उल्लेख किया है कि सन् 1999 में जो उसे नियुक्ति पत्र मिला था वह आगामी आदेश (till further order) तक के लिए था। प्रदर्श W/4 मे साक्षी ने अंकित तथ्य को स्वीकार किया है जो निम्नवत हैः–

PROJECT IMPACT (COMPUTER STREAM)

NO. Dated : 21-2-97

NOTICE

The Project Impact is going to end on 31.3.1997. As such notice is hereby given to the following faculty and supporting staff who have been recruited on contract basis for the duration of the Project Impact that their services will stand terminated on the expiry of the Project Impact i.e. on 31.3.1997 :-

Faculty members :

1. Shri V.K. Jain, Reader

2. Shri P.K. Agrawal, Lecturer,

Supporting Staff:

1. Shri Sanjay Bhaskar, Computer Operator.

2. Shri Vinod Dialani, Computer Operator.

3. Shri Ramesh Saini, Class-IV

Sd/-

(S.C. Agrawal)

Coordinator,

Copy to the following for information and further necessary action :-

1. The Principal, MERC, Jaipur.

2. The Dy. Registrar (Accounts) MRCCE, Jaipur.

3. Faculty members/Supporting Staff Concerned. Sh Ramesh Saini

Signature

Coordinator.

24. दिनांक 21.2.1997 के आदेश द्वारा 31.3.97 को प्रार्थी की सेवा अनुबन्ध के अनुसार स्वतः समाप्त हो जानी थी लेकिन 31.3.97 के आदेश (प्रदर्श W/5) से दिनांक 30.9.97 तक सेवा पुनः विस्तारित की गयी। दिनांक 3.10.97 के आदेश (प्रदर्श W/6) से प्रार्थी की सेवा का विस्तार 31 मार्च 1998 तक किया गया, दिनांक 1.4.99 के आदेश (प्रदर्श W/8) से सेवा का विस्तार 30.9.99 तक किया गया और दिनांक 1.5.99/28.9.99 के आदेश से सेवा का विस्तार आगामी आदेश तक कर दिया गया लेकिन सेवा की शर्तें आदेश दिनांक 3.10.97 के शर्तों पर ही आधारित रखी गयी। उक्त स्थिति में सेवा विस्तार की स्थिति को समझने के लिए प्रदर्श W/6, प्रदर्श W/8 और प्रदर्श W/9 का उल्लेख किया जाना प्रासंगिक है जो निम्नवतः है :–

PROJECT IMPACT (COMPUTER STREAM)-'SSS'

NO. IMPACT/ECC/26/97/ Dated : 03-10-97

ORDER

Shri Ramesh Saini whose date of birth is 5-7-75 is appointed as Class IV Purely on ad hoc temporary basis in the project IMPACT (Computer Streem)- 'SSS' on a consolidated salary of Rs. 850.00 PM/- period of six months i.e. upto 31st March, 1998.

His services can be terminated at any time by one month's notice in writing either by employee to the Coordinator or by the Coordinator to the employee or on recovery of month's pay in lieu thereof of the pay for the period by which one month's notice falls shor

His appointment is subject to the following conditions : -

(a) He should join his appointment latest by 05-10-97 falling which the appointment order is liable to be cancelled without notice.

(b) In addition to the normal duties of his post he will discharge other duties as assigned to him by the Coordinator from time to time.

(c) He will be governed by the rules of the project IMPACT- 'SSS' as framed form time to time.

(d) If the above terms and conditions are acceptable to him he may sign the second copy in token of acceptance and return the same to the Coordinator, project IMPACT, Department of Computer Engineering, M.R. Engineering College, Jaipur-302017.

Chief Coordinator

project IMPACT(Computer Stream)- 'SSS'

Above terms and conditions accepted

Signature

Copy forwarded to the following for information & necessary action

1. Principal

2. Registrar

3. Dy. Registrar (A/c) with one spare copy.

4. Ramesh Saini

PROJECT IMPACT (COMPUTER STREAM)- 'SSS'

MALAVIYA REGIONAL ENGINEERING COLLEGE CAMPUS, JAIPUR

NO. IMPACT/ECC/ Dated : 01-04-99

ORDER

Service of the following staff appointed on contract basis under the project is extended for six months w.e.f. 01-04-99 to 30-09-99 under the sustainability support scheme of the project.

1. Sh.Ramesh Saini Lab attendant

Other terms and conditions of their appointment remain unchanged.

(Prof.S.C. Agrawal)

Chief Coordinator

Project IMPACT

Copy to:

1. Principal

2. D.R. A/cs

3. Ramesh Saini

PROJECT IMPACT (COMPUTER STREAM)-SSS' (sustainability support scheme)

MALAVIYA REGIONAL ENGINEERING COLLEGE CAMPUS, JAIPUR

NO. IMPACT/ECC/ Dated : 1st May, 1999

28/9/99

OFFICE ORDER

In partial modification of order No. IMPACT/ECC dated 1st April, 1999, the engagement of Shri Ramesh Saini appointed on contract basis under the above Project is extended till further orders. This is under the 'Sustainability Support Scheme of Project' and the incumbent will not have any claim on the appointment in the MREC. Other terms and Conditions will remain the same as notified vide order NO. IMPACT/ECC/26/97/Dated 03-10-97. He will be given a consolidated Salary of Rs. 3500/- Per Month, w.e.f. 01.05.99.

(S.C. Agrawal)

Chief Coordinator

Project IMPACT

Copy to:

1. Principal for his kind information.

2. Registrar

3. Dy. Registrar (A/c) with one spare copy.

4. Ramesh Saini

25. प्रदर्श W/9 द्वारा प्रार्थी को कार्य का विस्तार आगामी आदेश तक किया गया जो प्रदर्श W/6 दिनांकित 3.10.97 में दी गयी शर्तों के अधीन थी और केवल "प्रोजेक्ट इम्पैक्ट" के अस्तित्व में रहने तक ही प्रार्थी सेवार्थ अनुबन्धित था और "प्रोजेक्ट इम्पैक्ट" के समाप्त होने के साथ प्रार्थी की सेवा समाप्त हो जानी थी एवं प्रार्थी द्वारा की गयी सेवा के आधार पर उसे संस्थान में सेवा पाने का कोई हक प्रदत्त नहीं था जिसका उल्लेख सम्बन्धित आदेशों में है। इन शर्तों को प्रार्थी ने स्वीकार भी किया है जिसका उल्लेख 3.10.97 के आदेश में हैं। प्रार्थी ने मौखिक साक्ष्य में स्वंय उल्लेख किया है कि सन् 99 में उसे जो नियुक्ति पत्र दिया गया था उसके द्वारा उसे (till further order) तक के लिए लगाया गया था। प्रदर्श W/9 उक्त आदेश है जिसका उल्लेख प्रार्थी ने किया है। इसी आदेश में यह भी कहा गया है कि प्रार्थी को MREC में उक्त प्रोजेक्ट में कार्य करने के कारण नियुक्ति का कोई हक नहीं होगा। प्रार्थी का बहस में यह कहना कि उसे "प्रोजेक्ट इम्पैक्ट" की समाप्ति के बाद भी संस्थान के कार्य में रखा गया इस बहस को समर्थन देने के लिए कोई प्रलेखीय साक्ष्य पत्रावली पर प्रार्थी ने प्रस्तुत नहीं किया है। प्रार्थी ने मौखिक प्रतिपरीक्षा में यह कहा है कि "प्रोजेक्ट इम्पैक्ट" सन् 2000 में खत्म हुआ है, विपक्षी साक्षी ने 2003 में समाप्त होना कहा है परन्तु यह तथ्य निर्विवाद है कि "प्रोजेक्ट इम्पैक्ट" समाप्त हो चुका है क्योंकि स्वंय प्रार्थी द्वारा इस बात का उल्लेख बहस में किया गया है तथा याचिका के प्रस्तर दो में भी कहा गया है। प्रार्थी का यह कहना गलत साबित होता है कि "प्रोजेक्ट इम्पैक्ट" समाप्त होने के बाद भी उससे कार्य लिया जाता रहा है क्योंकि प्रार्थी को किया गया अन्तिम भुगतान रू. 3500/ का है जो "प्रोजेक्ट इम्पैक्ट" की एकमुश्त राशि है और 1.9.99/28.9.99 के आदेश के अनुकूल धनराशि है उक्त व्याख्या और विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि प्रार्थी की सेवा केवल "प्रोजेक्ट इम्पैक्ट" के अस्तित्व तक सीमित थी तथा पत्रावली पर ऐसा कोई साक्ष्य नहीं है जिससे इस अवधारणा को ग्रहण करने के लिए बल मिले कि विपक्ष को अपने यहाँ प्रार्थी को सेवा में बनाये का कोई दायित्व था।

26. जहां तक इस बिन्दु के निराकरण का प्रश्न है कि प्रार्थी ठेकेदार के माध्यम से संस्थान की सेवा में था या संस्थान ने प्रार्थी की नियुक्ति की थी, इस

सन्दर्भ में उल्लेखनीय है कि विपक्ष का कथन है कि प्रार्थी ठेकेदार के माध्यम से विपक्ष के सेवार्थ अनुबन्ध पर था तथा प्रार्थी का कथन है कि वह ठेकेदार के माध्यम से नहीं नियुक्त था। इस तथ्य को सिद्ध करने का भार प्रार्थी पर है कि वह सकारात्मक साक्ष्य से सिद्ध करे कि संस्थान ने उसकी नियुक्ति की है और विपक्ष की कमजोरियों से प्रार्थी को कोई लाभ नहीं मिल सकता है।

27. मालवीय राष्ट्रीय प्रोद्योगिक संस्थान, जयपुर द्वारा प्रार्थी को कोई नियुक्ति दी गयी इसका समर्थन स्वयं प्रार्थी के साक्ष्य से नहीं होता है। उक्त संस्थान भारत सरकार का एक प्रतिष्ठित शिक्षण संस्थान है जिसमें हर पद पर नियुक्ति हेतु एक प्रक्रिया निर्धारित है। प्रतिपरीक्षा में याची ने स्वयं स्वीकार किया है एवं कहा है कि जब उसको नियुक्ति दी गयी उसके पहले अखबार में कोई विज्ञापन नहीं निकाला गया था, न प्रार्थी की कोई लिखित परीक्षा हुई थी न साक्षात्कार हुआ था, उससे केवल बायो–डाटा लिया गया था। यह भी स्वीकार किया है कि जब भी उसे ''प्रोजेक्ट इम्पैक्ट'' के कार्य पर लगाया गया उसे नियुक्ति पत्र दिया गया जो विभिन्न अवधि से सम्बन्धित है। जिन आदेशों को प्रार्थी नियुक्ति पत्र कह रहा है वह सभी आदेश ''प्रोजेक्ट इम्पैक्ट'' में प्रार्थी की अनुबन्ध पर सेवा के विस्तार का उल्लेख करते हैं। प्रथम आदेश जिसको याची पक्ष के विद्वान प्रतिनिधि ने नियुक्ति पत्र कहा है वह किसी भी दृष्टिकोण से नियुक्ति पत्र नहीं हो सकता है। वह एक कार्य आवंटन आदेश है जिसमें दो व्यक्तियों को ''प्रोजेक्ट इम्पैक्ट'' में दो अलग–2 स्ट्रीम में काम आवंटित किया गया है। प्रदर्श W/4 आदेश में अंकित इबारत को प्रार्थी ने प्रतिपरीक्षा में स्वीकार किया है जिसमें कहा गया है ''प्रोजेक्ट इम्पैक्ट'' की समाप्ति पर दिनांक 31.3.97 को प्रार्थी की सेवाएं समाप्त हो जायेगी। प्रोजेक्ट जारी रहने पर 31.3.97 के बाद भी प्रार्थी की सेवा का विस्तार किया गया है। प्रदर्श W/6 तथा प्रदर्श W/9 की शर्तों को भी प्रार्थी ने प्रतिपरीक्षा में स्वीकार किया है। प्रार्थी ने यह भी स्वीकार किया है कि उसे जब भी लगाया गया ''प्रोजेक्ट इम्पैक्ट'' के ही लिये लगाया गया। प्रार्थी ने कहा है कि वर्ष 2000 में ही ''प्रोजेक्ट इम्पैक्ट'' समाप्त हो गया परन्तु यह उसका कथन मात्र है इस सम्बन्ध में कोई उल्लेख याचिका में नहीं है कि प्रोजेक्ट 2000 में समाप्त हुआ न कोई प्रलेखीय साक्ष्य प्रार्थी ने पत्रावली पर प्रस्तुत किया है। प्रतिपरीक्षा में प्रार्थी ने कहा है कि ''प्रोजेक्ट इम्पैक्ट'' की समाप्ति के बाद वह निर्देशक के कार्यालय में कार्यरत रहा परन्तु ऐसा कोई लिखित आदेश उसने नहीं प्रस्तुत किया है। प्रार्थी ने कहा है कि यह सही नहीं है कि उसकी सेवा के विस्तार के सम्बन्ध में जितने आदेश हुए सभी ''प्रोजेक्ट इम्पैक्ट'' से ही सम्बन्धित थे परन्तु प्रार्थी का ऐसा कहना गलत है क्योंकि सभी आदेश जो पत्रावली पर प्रदर्श W/1 लगायत प्रदर्श W/9 प्रस्तुत है वह सभी ''प्रोजेक्ट इम्पैक्ट'' से ही सम्बन्धित है। उक्त स्थिति से यह स्पष्ट है कि प्रार्थी को संस्थान द्वारा न कोई नियुक्ति पत्र दिया गया न कोई नियुक्त हेतु विज्ञापन किया गया, न कोई परीक्षा अथवा साक्षात्कार हुआ।

28. इस सम्बन्ध में विपक्षी साक्षी सवाईसिंह के साक्ष्य से जहॉ तक प्रार्थी को मदद मिलने का प्रश्न है सवाईसिंह ने कहा है कि प्रदर्श W/1 श्री रमेश सैनी की नियुक्ति से सम्बन्धित है परन्तु उल्लेखनीय है कि सवाईसिंह के कहने से प्रदर्श W/1 को नियुक्ति पत्र की संज्ञा नहीं दी जा सकती है जैसा कि उपर इस सम्बन्ध में विस्तृत उल्लेख किया जा चुका है।

29. ठेकेदार के माध्यम से प्रार्थी की नियुक्ति से सम्बन्धित टेण्डर विपक्ष द्वारा पत्रावली पर नहीं प्रस्तुत किया गया है इस तथ्य को विपक्षी साक्षी ने पृष्ठ एक पर प्रतिपरीक्षा में स्वीकार किया है परन्तु विपक्ष की केवल इस कमी के आधार पर यह नहीं कहा जा सकता है कि प्रार्थी की नियुक्ति संस्थान ने की है क्योंकि इस सम्बन्ध में कोई प्रक्रिया ही नहीं अपनायी गयी एवं प्रार्थी का इस सम्बन्ध में कोई सकारात्मक प्रलेखीय या मौखिक साक्ष्य भी पत्रावली पर नहीं है। अगर कोई प्रक्रिया नहीं अपनायी गयी तो प्रार्थी कैसे अस्तित्व में आ गया। प्रार्थी की तरफ से प्रदर्श W/11 के अतिरिक्त, जो अन्तिम माह का चेक द्वारा भुगतान है, कोई अन्य भुगतान विवरण पत्रावली पर नहीं प्रस्तुत किया गया है जिससे इस बात का पता चले कि भुगतान ठेकेदार ने किया है या संस्थान ने किया है। पेज 2 और 3 पर याची को प्रतिपरीक्षा में सुझाव दिया गया है कि वर्ष 95 से वेतन के मद में उसे जो भुगतान दिया जा रहा था वह रिद्धकरण एण्ड सन्स द्वारा दिया जा रहा था और कुछ अवधि तक बीच में उसे भुगतान त्रिलोक सोल्जर्स द्वारा दिया जा रहा था जिसे प्रार्थी ने इन्कार किया है और कहा है कि उसे भुगतान चेक द्वारा दिया जाता था। यह भी कहा है कि उसे भुगतान 99 से 2003 तक चेक द्वारा होता था जिस पर रजिस्ट्रार के हस्ताक्षर होते थे परन्तु भुगतान स्टेटमेन्ट से सम्बन्धित आदेश या अभिलेख उसकी तरफ से पेश नहीं हुआ है।

30. विपक्ष की तरफ से अलग–अलग दो अनुबन्ध मैसर्स रिद्धकरण सिंह एण्ड सन्स तथा कुल सचिव के बीच अन्य कार्यों सहित कर्मचारी उपलब्ध कराने के अनुबन्ध क्रमशः सन् 1996 एवं 1998 के प्रस्तुत है लेकिन इससे वर्तमान मामले में मदद नही ली जा सकती है। मैसर्स रिद्धकरण सिंह एण्ड सन्स को ठेके पर कार्यों तथा कर्मचारियों के भुगतान से सम्बन्धित वर्ष 1995 एवं 1996 मे संस्थान द्वारा दिये गये चेक का विवरण पत्रावली पर उपलब्ध है जिससे यह जाहिर है कि प्रार्थी की जून 95 में सेवा में उसके प्रवेश के समय भी ठेके पर कर्मचारियों की सेवा लेने का कार्य अस्तित्व में था परन्तु निर्विवाद रूप से इससे यह नहीं कहा जा सकता है कि इसमें प्रार्थी के भुगतान का विवरण शामिल है। प्रार्थी ने 1995 से 2003 तक के बीच प्रदर्श W/11 के अतिरिक्त भुगतान का कोई विवरण नहीं प्रस्तुत किया है जिससे जाहिर हो कि उसे संस्थान भुगतान करता था।

31. श्री ओम प्रकाश ठेकेदार को निर्गत अनुभव प्रमाण पत्र का उल्लेख सवाई सिंह की प्रतिपरीक्षा में किया गया है। प्रमाण–पत्र निर्गत होने की तिथि 25.9.2000 है जिससे यह जाहिर है कि वह साफ–सफाई के कार्य से जुड़े कर्मियों के अतिरिक्त चतुर्थ श्रेणी कर्मचारी, कनिष्क लिपिक, कम्प्यूटर ऑपरेटर, डाटा एन्ट्री आपरेटर आदि कर्मचारियों को ठेके पर संस्थान को विगत डेढ़ साल से उपलब्ध कराते रहे हैं। इनके पूर्व ठेका मैसर्स रिद्धकरण सिंह एण्ड सन्स का रहा है। सवाईसिंह के समक्ष प्रतिपरीक्षा में मैसर्स रिद्धकरण सिंह एण्ड सन्स के ठेके को रखकर यह प्रश्न रखा गया है कि उक्त ठेका 8.4.96 को हुआ और श्री रमेश सैनी 01.06.95 को नियुक्त हुए तो वह ठेके के अधीन कैसे आये ? जिसके उत्तर में उन्होंने कहा है कि सन् 1995 की सम्बन्धित अवधि का अनुबन्ध पत्रावली पर नहीं प्रस्तुत हो सका है परन्तु नियुक्ति की कार्यवाही

पहले से ठेकेदार के माध्यम से चल रही है। सन् 1995 में अनुबन्ध से सम्बन्धित भुगतान मैसर्स रिद्धकरण सिंह एण्ड सन्स को किया गया है जिसके चेक भुगतान के दो वाउचर पत्रावली पर उपलब्ध है जिसमें एक चेक संख्या 648437 दिनांकित 8.9.95 रुपया 15,398 तथा चेक संख्या 648328 दिनांकित 25.7.95 रुपया 17,421 से सम्बन्धित है। सन् 1995, 1996 तथा अन्य वर्षों के अन्य कई चेक भी संलग्न हैं। इससे इस तथ्य को बल मिलता है कि सन् 1995 में भी ठेके पर कार्य–सम्पन्न और कर्मचारी उपलब्ध कराने की व्यवस्था विद्यमान थी तथा इन सारी परिस्थितिजन्य साक्ष्यों के आधार पर यह सुरक्षित निष्कर्ष निकलता है कि श्री सुरेश सैनी भी ठेके के आधार पर प्रोजेक्ट इम्पैक्ट में अस्तित्व में आये है क्योंकि प्रबन्धन द्वारा उन्हें नियुक्त करने में किसी प्रकार का कदम न उठाने का तथ्य उन्होनें स्वयं स्वीकार किया है। प्रार्थी पक्ष द्वारा इस बिन्दु पर कोई स्पष्टीकरण नहीं है कि जब दैनिक वेतन भोगी, अस्थायी या तदर्थ नियुक्ति की ''प्रोजेक्ट इम्पैक्ट'' ने प्रक्रिया शुरू नहीं की तो फिर ''प्रोजेक्ट इम्पैक्ट'' के सम्पर्क में प्रार्थी कैसे आये? इस आधार पर भी विपक्ष के कथन को बल मिलता है कि प्रार्थी की ''प्रोजेक्ट इम्पैक्ट'' से सम्बद्धता ठेकेदार के माध्यम से हुई है।

32. उक्त व्याख्या एवं विश्लेषण से मैं इस निष्कर्ष पर हूँ कि यह तथ्य बिल्कुल निर्विवाद है कि प्रार्थी की सम्बद्धता केवल ''प्रोजेक्ट इम्पैक्ट'' के लिए थी और प्रोजेक्ट के अस्तित्व में रहने तक सीमित थी। प्रार्थी यह तथ्य सिद्ध करने में असफल है कि उसकी नियुक्ति संस्थान द्वारा की गयी थी क्योंकि प्रदर्श W/1 नियुक्ति पत्र नहीं है तथा प्रार्थी के मामले में विपक्ष ने कोई नियुक्ति प्रक्रिया नहीं अपनायी थी। प्रार्थी द्वारा विधिक रूप से अनुमन्य न कोई नियुक्ति पत्र प्रस्तुत किया गया है और नही कोई सेवा मुक्ति आदेश प्रस्तुत किया गया हैं। पत्रावली पर उपलब्ध तथ्य एवं परिस्थिति से ठेकेदार के माध्यम से प्रार्थी की सेवा विपक्ष को मिलने का समर्थन मिलता है।

33. जहां तक विपक्ष द्वारा प्रार्थी को सेवामुक्त करने में धारा 25 (एफ) के प्राविधान के उल्लंघन तथा उससे प्रार्थी को मिलने वाले लाभ का प्रश्न है उभयपक्ष द्वारा अपने–अपने कथन के समर्थन में विभिन्न विधिक दृष्टान्त प्रस्तुत किये गये है जिसका उल्लेख उपर किया गया है। धारा 25 (एफ) के उल्लंघन का लाभ पाने के लिए यह आवश्यक है कि प्रार्थी यह सिद्ध करे कि उसकी सेवामुक्ति धारा 25 (00) में परिभाषित ''छटनी'' की परिभाषा से आच्छादित है जो निम्नवत् है :–

''छटनी''' से नियोजक द्वारा किसी कर्मकार की सेवा का ऐसा पर्यवसान अभिप्रेत है, जो अनुशासन सम्बंधी कार्यवाही के रूप में दिए गए दंड से भिन्न किसी भी कारण से किया गया हो, किन्तु इसके अन्तर्गत निम्नलिखित नहीं आते :–

(क) कर्मकार की स्वेच्छया निवृति, अथवा

(ख) अधिवार्षिकी आयु का हो जाने पर कर्मकार की उस दशा में निवृत्ति जिसमें नियोजक और संयुक्त कर्मकार के बीच हुई किसी नियोजन संविदा में उस निमित्त कोई अनुबन्ध अन्तर्विष्ट हो, अथवा

(खख) नियोजक और सम्पृक्त कर्मकार के बीच हुई नियोजन संविदा के समाप्त हो जाने पर उसका नवीकरण न किए जाने या नियोजन संविदा में उस निमित्त अन्तर्विष्ट किसी अनुबन्ध के अधीन ऐसी संविदा का पर्यवसान किए जाने के फलस्वरूप किसी कर्मकार की सेवा का पर्यवसान।

(ग) इस आधार पर कर्मकार की सेवा का पर्यवसान कि उसका स्वास्थ्य बराबर खराब रहा है।

34. प्रार्थी की नियुक्ति के सम्बन्ध में की गयी उपरोक्त व्याख्या व विश्लेषण से यह प्रकट है कि प्रार्थी की सेवा अनुबन्ध पर आधारित थी जो ''प्रोजेक्ट इम्पैक्ट'' के उद्देश्य हेतु थी और उसका विस्तार विपक्ष द्वारा ''प्रोजेक्ट इम्पैक्ट'' के समाप्त होने के कारण आगे जारी नहीं रखा गया क्योंकि प्रार्थी की सेवा केवल ''प्रोजेक्ट इम्पैक्ट'' के कार्यकाल तक सीमित थी अतः प्रार्थी पर धारा 2 (OO) (bb) के प्राविधान लागू होते है। प्रार्थी तद्नुसार छंटनी की परिभाषा से आच्छादित नहीं है और धारा 25 एफ का लाभ पाने का हकदार नहीं है। इस सम्बन्ध में AIR 2004 S.C. page 4839, Exeutive Engineer, Z.P. Engg. Division v/s. Digambara Rao में माननीय सर्वोच्च न्यायालय द्वारा दी गयी विधि व्यवस्था उल्लेखनीय है जिसमें माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि जहां एक विशिष्ट स्कीम में पेयजल और निर्माण की सेवा प्रदान करने के लिए कर्मकार की नियुक्ति की गयी थी और उसकी सेवाएं स्कीम की समाप्ति के साथ समाप्त कर दी गयी, ऐसे कर्मकार के सम्बन्ध में यह नहीं कहा जा सकता है कि उसे सेवा में नियमितिकरण अथवा धारा 25 एफ का लाभ मांगने का अधिकार है।

35. प्रार्थी की तरफ से प्रस्तुत दृष्टान्त 1984 (1) एस.सी.सी. पृष्ठ –509, गैमन इण्डिया लिमिटेड – अपीलार्थीगण बनाम निरन्जन दास – प्रत्यर्थीगण में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि धारा 2 (OO) के प्राविधान (a) (b) (c) की परिधि में न आने वाली सेवा समाप्ति छंटनी है। गैमन इन्डिया लिमिटेड–अपीलार्थी बनाम.....निरंजन दास.....प्रत्यर्थी में प्रत्यर्थी निरन्जनदास की नियुक्ति दिनांक 10.9.62 के आदेश से अपीलार्थी द्वारा वरिष्ठ क्लर्क के रूप में की गयी थी। 14.9.67 की नोटिस द्वारा प्रत्यर्थी की सेवा यह कहकर समाप्त कर दी गयी कि कम्पनी के कार्य की मात्रा में कमी के कारण मन्दी आ गयी है अतः 14.10.67 के बाद कम्पनी को प्रार्थी के सेवा की आवश्यकता नहीं रहेगी। नोटिस में यह भी उल्लेख किया गया कि भविष्य में कम्पनी के किसी कार्यस्थल पर यदि कोई कार्य देना सम्भव हुआ तो प्रत्यर्थी को नया अवसर प्रदान किया जायेगा। कम्पनी द्वारा प्रत्यर्थी को नोटिस में उसके द्वारा कम्पनी में की गयी सेवाओं के लिए धन्यवाद भी दिया गया। प्रत्यर्थी द्वारा उठाये गये औद्योगिक विवाद में विवाद्यक यह था कि क्या प्रत्यर्थी की छंटनी अनुचित एंव अवैधानिक है, यदि हां तो किस निर्देश की आवश्यकता है? औद्योगिक न्यायाधिकरण ने छंटनी अनुचित एवं अवैध अवधारित की और यह घोषणात्मक अनुतोष प्रदान की कि जब तक विधिक रूप से प्रत्यर्थी की छंटनी नहीं की जाती वह वेतन सहित सेवा में माना जायेगा। औद्योगिक न्यायाधिकरण के एवार्ड के विरूद्ध सिविल रिट याचिका माननीय एकलपीठ द्वारा स्वीकार की गयी और यह अवधारित किया गया कि प्रत्यर्थी की सेवा समाप्ति धारा 25 एफएफएफ के प्राविधान से नियन्त्रित होगी क्योंकि उनकी सेवामुक्ति कम्पनी की बन्दी के परिणामस्वरूप हुई जिसमें सेवामुक्ति के पूर्व क्षतिपूर्ति की अदायगी

आवश्यक नहीं है तथा इस कारण प्रत्यर्थी की सेवामुक्ति वैध है। माननीय एकल पीठ द्वारा औद्योगिक न्यायाधिकरण का पंचाट निरस्त कर पत्रावली पीठ द्वारा पुनः पंचाट पारित करने हेतु इस निर्देश के साथ प्रत्यावर्तित की गयी कि औद्योगिक न्यायाधिकरण यह निर्णित करे कि माननीय एकल पीठ द्वारा अपने निर्णय में दिये गये मार्गदर्शन के अनुसार किस निर्देश की आवश्यकता है। प्रत्यर्थी द्वारा माननीय एकल पीठ के निर्णय के विरूद्ध प्रस्तुत लेटर्स पेटेन्ट अपील में माननीय खण्डपीठ ने अपील स्वीकार की और यह अवधारित किया कि सरकार द्वारा प्रेषित रिफरेन्स में ही यह स्पष्ट किया गया था कि सेवामुक्ति छंटनी थी और औद्योगिक न्यायाधिकरण को यह विचारण करना था कि छंटनी अनुचित या अवैधानिक थी, अतः एकलपीठ को रिफरेन्स का आधार बदलने की छूट नहीं थी कि मामला 25–एफएफएफ के अधीन ''औद्योगिक उपक्रम की बन्दी'' का था। माननीय खण्डपीठ के निर्णय के विरूद्ध अपील में माननीय सर्वोच्च न्यायालय के समक्ष यह प्रश्न विचारणीय था कि क्या माननीय एकलपीठ द्वारा औद्योगिक न्यायाधिकरण के निर्णय में हस्तक्षेप न्यायसंगत था कि मामला 25–एफएफएफ द्वारा आच्छादित ''औद्योगिक उपक्रम की बन्दी'' का था या औद्योगिक न्यायाधिकरण यह अवधारित करने में सही था कि ''छंटनी'' धारा 25–एफ के प्राविधान से आच्छादित थी। माननीय सर्वोच्च न्यायालय ने निर्णय के प्रस्तर दो पेज 511 में यह प्रेक्षण किया है कि उक्त प्रश्न का उत्तर मात्र रेफरेन्स के अवलोकन से दिया जा सकता है जिसमें कहीं इस बात की सुगबुगाहट भी नहीं है कि कम्पनी का दिल्ली कार्यालय बन्द होने जा रहा है। माननीय सर्वोच्च न्यायालय ने अपील स्वीकार की तथा औद्योगिक न्यायाधिकरण के निर्णय की पुष्टि की। निर्णय के प्रस्तर दो में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है, ".....on a true construction of the notice, it would appear that the respondent had become surplus on account of reduction in volume of work and that constitutes Retrenchment even in the traditional sense of the term ……..।

36. वर्तमान मामले के तथ्य एवं परिस्थितियों तथा गैमन इन्डिया लिमिटेड के तथ्य एवं परिस्थितियों के अवलोकन से यह स्पष्ट है कि दोनों में कोई साम्यता नहीं है तथा रमेश सैनी के मामले में उक्त दृष्टान्त से कोई मदद नहीं ली जा सकती है क्योंकि श्री रमेश सैनी का मामला धारा 2 (oo)(bb) से आच्छादित है।

37. मोहनलाल –अपीलार्थी बनामकृकृ मैनेजमेन्ट ऑफ मैसर्स भारत इलेक्ट्रिानिक्स लिमिटेड ....प्रत्यर्थी में अपीलार्थी मोहनलाल, प्रत्यर्थी, मैसर्स भारत इलैक्ट्रिानिक्स लिमिटेड में अस्थायी सेल्समैन के पद पर दिनांक 08.12.73 से 520 रूपये मासिक वेतन पर नियुक्त था। अपीलार्थी की सेवा दिनांक 12.10.74 के पत्र द्वारा दिनांक 19.10.74 से अचानक एवं अप्रत्याशित रूप से समाप्त कर दी गयी। औद्योगिक विवाद में यह प्रश्न उठा कि क्या अपीलार्थी की सेवा समाप्ति विधि विरूद्ध एवं अनुचित है, यदि हां तो अपीलार्थी किस अनुतोष का हकदार है तथा इस सम्बन्ध में क्या निर्देश आवश्यक है? प्रत्यर्थी के कथनानुसार अपीलार्थी प्रारम्भिक रूप में अपीलार्थी छः माह की परिवीक्षा पर नियुक्त था तथा परिवीक्षा की अवधि 8.9.74 तक विस्तारित थी तथा विस्तारित परिवीक्षा के बाद अयोग्यता के आधार पर अपीलार्थी की सेवा समाप्त की गयी। विद्वान श्रम न्यायालय ने यह पाया कि नियुक्ति पत्र में परिवीक्षा का कोई उल्लेख नहीं था। अपीलार्थी नियुक्ति आदेश के बाद पारित आदेश से प्रथम 6 माह की परिवीक्षा पर तथा बाद में विस्तारित परिवीक्षा आदेश के आधार पर 8.9.74 तक परिवीक्षा पर था तथा अयोग्यता के आधार पर पश्चातवर्ती परिवीक्षा आदेश के दौरान अपीलार्थी की सेवा समाप्त की गयी। तद्नुसार विद्वान श्रम न्यायालय ने यह अवधारित किया कि अपीलार्थी की सेवा समाप्ति धारा 2 (00) सपठित धारा 25 एफ के अनुसार छंटनी से परिभाषित नहीं है अतः सेवासमाप्ति न गलत है न अनुचित है न अवैध है। श्रम न्यायालय के निर्णय के विरूद्ध अपील माननीय सर्वोच्च न्यायालय ने स्वीकार की। माननीय सर्वोच्च न्यायालय ने यह पाया कि श्रम न्यायालय का निष्कर्ष गलत था कि अपीलार्थी की सेवासमाप्ति परिवीक्षा की अवधि में थी इसलिए सेवामुक्ति आदेश से धारा 2 (00) सपठित धारा 25एफ का उल्लंघन नहीं हुआ। माननीय सर्वोच्च न्यायालय के समक्ष एक मात्र यह प्रश्न विचारणीय था कि प्रत्यर्थी द्वारा प्रस्तुत कथन के आधार पर क्या अपीलार्थी की सेवासमाप्ति का आदेश छंटनी की परिभाषा से आच्छादित है? निर्णय के प्रस्तर 5 में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है, ".....The service of the appellant was terminated with effect from October 19, 1974. What was the nature and character of service of the appellant from September 8, 1974 when the extended period of probation expired and termination of his service on October 19, 1974? He was unquestionably not on probation. He was either temporary or permanent but not a probationer. How is it open then to the Labour Court to record a finding that the service of the appellant was terminated during the period of probation on account of his unsatisfactory work which did not improve in spite of repeated warnings? The Labour Court concluded that notwithstanding the fact that the appellant was not shown to have been placed on probation in the initial appointment letter but in view of the subsequent orders there was a period of probation prescribed for the appellant and that his service was terminated during the extended period of probation. This is gross error apparent on the face of the record which, if not interfered with, would result in miscarriage of justice.

38. हरिमोहन रस्तोगी –अपीलार्थी बनाम श्रम न्यायालय एवं अन्य–– प्रत्यर्थीगण में अपीलार्थी उत्तर प्रदेश राज्य विद्युत परिषद में सब स्टेशन सहायक के रूप में पुनः नियुक्त होकर दिनांक 4.12.1968 से कार्यरत था। शहर प्रभारी, लखनऊ के रूप में कार्यरत रहने के दौरान 31.12.67 को उसकी सेवाएं समाप्त कर दी गयी थी। मोहनलाल –अपीलार्थी बनाम .... मैसर्स भारत इलैक्ट्रानिक्स लिमिटेड .....प्रत्यर्थी के निर्णय को दृष्टिगत रख माननीय सर्वोच्च न्यायालय ने अपीलार्थी को विगत वेतन सहित सेवा में पुनर्स्थापित होने का आदेश दिया।

39. मोहनलाल तथा हरिमोहन रस्तोगी के मामले से प्रार्थी के मामले में कोई मदद नहीं ली जा सकती है क्योंकि इन दोनों मामलों में अपीलार्थीगण

एवं प्रत्यर्थीगण के बीच परस्पर नियोक्ता एवं कर्मकार होने तथा प्रार्थीगण को नियुक्ति देने और प्रार्थीगण के कार्य के स्वरूप के सम्बन्ध में कोई विवाद नहीं था जबकि वर्तमान मामले में प्रार्थी यह नहीं सिद्ध कर सका है कि उसे संस्थान द्वारा नियुक्ति दी गयी है। विपक्ष द्वारा नियुक्ति के तथ्य से स्पष्ट इन्कार किया गया है और कहा गया है कि संविदा के आधार पर प्रार्थी ''प्रोजेक्ट इम्पैक्ट'' के लिए ठेकेदार के जरिये सम्बद्ध था तथा उसकी सम्बद्धता ''प्रोजेक्ट इम्पैक्ट'' तक ही सीमित थी।

40. यशवन्त सिंह यादव के मामले में याची ने भारतीय संविधान के अनुच्छेद 226 के अन्तर्गत अपने नियुक्ति–पत्र के साथ माननीय उच्च न्यायालय में याचिका इस कथन के साथ प्रस्तुत किया कि वह आयुर्वेदिक औषधालय, मयूरवेरा, अलवर में दैनिक वेतन–भोगी, चतुर्थ श्रेणी कर्मचारी के रूप में दिनांक 28.11.85 को नियुक्त किया गया और इस नियुक्ति की अवधि 53 दिन की थी। बाद में दिनांक 28.1.86 के आदेश से उसकी नियुक्ति अवधि को विस्तरित किया गया और दिनांक 25.4.86 के आदेश से उसकी सेवा को आगामी आदेश तक विस्तरित किया गया। इस प्रकार उसने 13.8.87 तक उक्त औषधालय में कार्य किया। आगे याची ने उल्लेख किया कि अचानक उसकी सेवा दिनांक 13.8.87 के क्रमशः प्रत्यार्थी 2 एवं 3 के आदेश से समाप्त कर दी गयी तथा दोनों प्रत्यार्थीगण द्वारा पारित सेवा समाप्ति सम्बन्धित आदेश दिनांक 13.8.87 के ही थे। याची ने सेवा विस्तार सम्बन्धित आदेश दिनांक 28.1.86 और 25.4.86 एवं सेवा समाप्ति सम्बन्धित दोनों आदेश रिट याचिका के साथ संलग्न किये।

याची ने सेवा समाप्ति के दोनों आदेशों को इस आधार पर चुनौती दी थी कि औद्योगिक विवाद अधिनियम 1947 के अन्तर्गत वह ''कर्मकार'' तथा औषधालय ''उद्योग'' की परिभाषा से आच्छादित था और सेवा समाप्ति आदेश दिनांक 13.6.87 के ठीक पूर्व 12 कलेण्डर महीनों में उसने लगातार 240 दिन से ज्यादा अवधि तक सेवा की, इसलिए उसको सेवा समाप्ति ''छटनी'' की श्रेणी में परिभाषित है लेकिन उसकी छटनी धारा 25 (एफ) के आज्ञापक निर्देशों का पालन किये बिना की गयी। उसे न नोटिस दी गयी या नोटिस के बदले वेतन दिया गया और न ही क्षतिपूर्ति दी गयी जैसा कि धारा 25 एफ में प्राविधानित है अतः उसकी '' छटनी'' अवैध है। उसने याचना की कि सेवा समाप्ति सम्बन्धि दोनों आदेश निरस्त किये जाय तथा पिछले सम्पूर्ण वेतन के साथ उसे सेवा में वापस लिया जाय। याची ने यह भी याचना की, कि उससे एक नियमित चतुर्थ श्रेणी कर्मचारी का कार्य लिया जाता था लेकिन उसे केवल दैनिक मजदूरी दी जाती थी जो एक नियमित कर्मचारी के वेतन से काफी कम है अतः प्रत्यर्थीगण को नियमित कर्मचारी का वेतन देने के लिए भी निर्देशित किया जाय।

प्रत्यर्थीगण ने याचिका का विरोध करते हुए अपने कथन में याची की अंशकालीन दैनिक वेतन भोगी चतुर्थ श्रेणी कर्मी के रूप में नियुक्ति स्वीकार की और कहा कि याची की पूर्णकालीन नियुक्ति नहीं थी। यह भी कहा गया कि चूँकि वह अंशकालिक नियुक्ति पर था इसलिए ''कर्मकार'' की परिभाषा आच्छादित नहीं था जैसा कि औद्योगिक विवाद अधिनियम 1947 में परिभाषित है। इसलिए धारा 25 (एफ) के प्राविधान के पालन की आवश्यकता नहीं थी, अतः याचिका पोषणीय नहीं हैं।

प्रत्यर्थीगण की तरफ से इस बिन्दु पर कोई बचाव नहीं रखा गया कि औषधालय ''उद्योग'' की परिभाषा से आच्छादित नहीं है। माननीय उच्च न्यायालय की खण्डपीठ ने माननीय सर्वोच्च न्यायालय के विभिन्न दृष्टान्तों का उल्लेख करते हुए अवधारित किया की औषधालय ''उद्योग'' की परिभाषा से आच्छादित है।

माननीय उच्च न्यायालय के समक्ष इस मामले में यह प्रश्न विचारणीय था कि क्या अंशकालिन कर्मचारी धारा 2 (एस) में वर्णित ''कर्मकार'' की परिभाषा से आच्छादित है ? इस मामले में यह विशेष रूप से उल्लेखनीय है कि माननीय उच्च न्यायालय ने निर्णय के प्रस्तर 5 में विशिष्ट रूप से उल्लेख किया है कि पक्षकारों के बीच नियुक्ति की तिथि और सेवा समाप्ति की तिथि, नियुक्ति पत्र जारी होने तथा सेवा समाप्ति के आदेश जारी होने के बिन्दु पर तथा सेवा समाप्ति की तिथि तक कर्मचारी के कार्यरत रहने के तथ्य पर उभयपक्ष के बीच कोई विवाद नहीं था। यद्यपि सेवा की क्रमबद्धता प्रभावित थी लेकिन यह तथ्य महत्वपूर्ण था कि सेवा समाप्ति के दिन तक वह कार्यरत था। इस बात पर भी विवाद नहीं था कि धारा 25 (एफ) के अनुपालन में नोटिस अथवा वेतन या क्षतिपूर्ति नहीं दी गयी थी। इस प्रकार माननीय उच्च न्यायालय ने यह कहा कि कर्मचारी ने धारा 25 (एफ) के अनुरूप लगातार काम किया था अतः यह अवधारित किया कि प्रत्यर्थीगण द्वारा धारा 25 (एफ) का उल्लंघन किया गया था। अतः ''छटनी'' अवैध थी और सेवा समाप्ति का आदेश तद्नुसार निरस्त होने योग्य था।

जहॉ तक ''कर्मकार'' की परिभाषा से याची के आच्छादित होने का प्रश्न है माननीय उच्च न्यायालय ने माननीय सर्वोच्च न्यायालय और विभिन्न उच्च न्यायालयों द्वारा दृष्टान्तों में प्रदत्त विधि व्यवस्थाओं को उद्धृत करते हुए यह अवधारित किया कि याची ''कर्मकार'' की परिभाषा से आच्छादित था यद्यपि वह अंशकालीन कर्मचारी था। माननीय उच्च न्यायालय ने तद्नुसार रिट याचिका स्वीकार की तथा पिछले 50 प्रतिशत वेतन के साथ अंशकालीन कर्मचारी के रूप में ही पद स्थापित करते का निर्देश दिया परन्तु नियमित चतुर्थ श्रेणी कर्मचारी के रूप में वेतन दिये जाने सम्बन्धित अनुतोष के लिए याचिका अस्वीकार की। नियुक्ति पत्र का अभाव एवॅ अन्य परिस्थितियों को दृष्टिगत रख मैं इस निष्कर्ष पर हूँ कि यह दृष्टान्त शंकरलाल के वर्तमान मामले में केवल उसके ''कर्मकार'' होने के सम्बन्ध में लागू होता है। माननीय उच्च न्यायालय द्वारा दृष्टान्त में दी गयी विधि– व्यवस्था को दृष्टिगत रखते हुए अवधारित किया जाता है कि प्रार्थी ''कर्मकार'' है।

41. यशवन्त सिंह यादव के मामले से प्रार्थी श्री रमेश सैनी के पक्ष में कोई मदद नहीं ली जा सकती है क्योंकि वर्तमान मामले में विपक्ष द्वारा प्रारम्भ से ही प्रार्थी को नियुक्ति देने के तथ्य से इन्कार किया गया है और प्रार्थी यह सिद्ध नहीं कर सका है कि विपक्ष ने उसे कोई नियुक्ति पत्र दिया जबकि यशवन्त सिंह यादव के मामले में नियुक्ति दिया जाना, नियुक्ति की तिथि और सेवा समाप्ति का आदेश उभयपक्ष को स्वीकार है।

42. डी.के. यादव – अपीलार्थी बनाम जे.एन.ए. इण्डस्ट्रीज लिमिटेड– प्रत्यर्थी के मामले में अपीलार्थी की सेवाएं स्टैन्डिंग आर्डर्स के क्लॉज 13(2)(IV) के प्राविधान के अनुसार प्रत्यर्थी नियोक्ता द्वारा समाप्त की दी गयी थी। उक्त

प्राविधान के अनुसार अनुमोदित अवकाश की समाप्ति के बाद यदि कर्मकार अनाधिकश्त अनुपस्थिति की अवधि में आठ दिन के अन्दर वापस आकर सेवा में शामिल नहीं होगा तो उसकी सेवा समाप्त होगी यदि उसके द्वारा नियोक्ता को सन्तोषजनक स्पष्टीकरण नहीं प्रस्तुत किया जाता है। प्राविधान के अनुसार आठ कार्य दिवसों की समाप्ति के बाद यह माना जायेगा कि कर्मकार ने सेवा का परित्याग कर दिया है तथा सेवा में वापसी का उसे अधिकार नहीं है।

नियोक्ता द्वारा 12.12.80 के पत्र द्वारा अपीलार्थी को सूचित किया गया कि 3.12.80 से वह ड्यूटी से लगातार बिना अनुमति स्वतः अनुपस्थित रहा है अतः 3.12.80 से वह अपनी सेवा समाप्त समझे। अपीलार्थी का जवाब था कि उसके द्वारा 3.12.80 को सेवा में उपस्थिति देने के बावजूद उसे उपस्थिति पंजिका में हस्ताक्षर नहीं करने दिया गया तथा प्रवेश द्वार पर 3.12.80 तथा उसके बाद अन्दर जाने से रोका गया। यह भी कहा गया कि उसने 3.12.80 के पत्र में अनुपस्थिति का स्पष्टीकरण दिया है। श्रम न्यायालय ने यह अवधारित किया कि कर्मकार अपना मामला सेवा में पुनर्स्थापना योग्य साबित नहीं कर सका है एवं नियोक्ता द्वारा स्टैन्डिग आर्डर के अनुसार की गयी कार्यवाही औद्योगिक विवाद अधिनियम के प्राविधान के अनुसार ''छंटनी'' नहीं है। श्रम न्यायालय के निर्णय के विरूद्ध माननीय सर्वोच्च न्यायालय ने यह पाया कि कोई घरेलू जांच नही की गयी और न ही अपीलार्थी को अपना मामला बचाव हेतु रखने का अवसर प्रदान किया गया जिससे न्याय के नैसर्गिक सिद्धान्त का हनन हुआ। माननीय सर्वोच्च न्यायालय ने यह अवधारित किया, "In this case, admittedly, no opportunity was given to the appellant and no enquiry was held. The appellants's plea put forth at the earliest was that despite his reporting to duty on 3rd December, 1980, and on all subsequent days and readiness to join duty he was prevented from reporting to duty, nor was he permitted to sign the attendance register. The tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under clause 13 of the certified standing orders to terminate the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the Standing Order No. 13(2) (iv). Otherwise, it would become arbitrary, unjust and unfair, violating article 14. When so read the impugned action is violative of the principles of natural justice."

43. जसमेर सिंह बनाम हरियाणा राज्य एवं अन्य में अपीलार्थी दैनिक वेतन भोगी कर्मचारी था जिसकी नियुक्ति 1.1.93 को हुई थी और दिसम्बर 93 तक उसने सेवा की। उसने 240 दिन की सेवा भी पूरी कर ली थी। 31.12.93 को उसकी सेवा समाप्त कर दी गयी। अपीलार्थी की सेवाएं उसके कथनानुसार धारा 25 एफ, 25 जी एवं 25 एच के प्राविधान का अनुपालन किये बिना समाप्त की गयी। श्रम न्यायालय ने अपीलार्थी की सेवामुक्ति को विधि विरूद्ध माना एवं पूर्ण विगत वेतन के साथ सेवा में पुनर्स्थापना का आदेश दिया। माननीय उच्च न्यायालय की एकलपीठ ने श्रम न्यायालय के आदेश को निरस्त किया तथा एकलपीठ के निर्णय की पुष्टि माननीय खण्डपीठ द्वारा की गयी। माननीय सर्वोच्च न्यायालय ने खण्डपीठ के निर्णय के विरूद्ध अपील स्वीकार की तथा श्रम न्यायालय के निर्णय की पुष्टि की।

44. डी.के. यादव एवं जसमेर सिंह के मामले से भी याची के सन्दर्भ में कोई मदद नहीं ली जा सकती है क्योंकि दोनों मामले में नियुक्ति का विवाद नहीं था। डी.के. यादव के मामले में प्रार्थी की सेवामुक्ति में नैसर्गिक न्याय के सिद्धान्त का उल्लंघन पाया गया जिसका अनुसरण स्टैन्डिंग आर्डर के प्राविधान लागू करने में नियोक्ता द्वारा नहीं किया गया एवं जसमेर सिंह के मामले में उनकी सेवामुक्ति में छंटनी की परिभाषा से आच्छादित पायी गयी जबकि रमेश सैनी के मामले में ऐसा नहीं है।

45. गिरिश कुमार जैन बनाम यूनियन ऑफ इन्डिया एवं अन्य में याची गिरिश कुमार जैन जयपुर स्थित राजस्थान हाउसिंग प्रोजेक्ट के लिए द इन्जिनियरिंग प्रोजेक्ट (इन्डिया) लिमिटेड के अधीन संविदा पर नियुक्त थे। याची को जूनियर सुपरवाइजर के पद पर नियुक्ति आदेश दिनांकित 1.2.90 द्वारा अस्थायी प्रोजेक्ट इस्टैबलिशमेन्ट में प्रदान की गयी थी। नियुक्ति पत्र निम्न स्वरूप में था :– "You shall work as JR. Superior in our temporary project establishment, i.e. EPI, Jaipur Housing Project, on contract employment for a period of Two Year(s) starting from 01.02.90 to 31.01.1992 or the completion of the project, which ever is earlier. On the expiry of this period, you shall automatically stand relieved from this contract employment".

नियुक्ति पत्र में दी गयी अवधि की समाप्ति के बाद भी याची कार्यरत रहे यद्यपि म्च् का कहना था उक्त अवधि का दो साल के लिए विस्तार किया गया था परन्तु इस सम्बन्ध में कोई प्रलेख प्रत्यर्थी ने नहीं प्रस्तुत किये थे। याची का कथन था कि जब समय की समाप्ति के साथ याची की सेवा दिनांक 1.1.92 को स्वतः समाप्त नहीं हुई तथा विस्तारित भी हुई तो ऐसी दशा में याची की सेवासमाप्ति न्यायसंगत नहीं है। याची की सेवा 2.2.93 के आदेश द्वारा 6.2.93 से समाप्त की गयी थी। सेवासमाप्ति के पत्र के साथ संविदा की शर्तों तथा विधि के अनुसार (Rs. 12,500,4)P की धनराशि भी भेजी गयी थी जिसमें (Rs. 2168,30) एक माह की नोटिस के बदले धनराशि थी।

याची ने सेवासमाप्ति आदेश को इस आधार पर चुनौती दी कि संविधान के अनुच्छेद 12 के अर्थों में प्रत्यर्थी ''राज्य'' है और बहस के उद्देश्य से यह मान भी लिया जाय की प्रोजेक्ट समाप्त हो गया था तो यह आवश्यकत था कि याची का समायोजन EPI के किसी अन्य प्रोजेक्ट में होना चाहिए था क्योंकि EPI सम्पूर्ण भारत में विभिन्न अन्य प्रोजेक्ट चलती तथा उसका कियान्वयन करती है इसलिए याची की सेवाएं समाप्त नहीं होनी चाहिए थी। यह बहस भी कि गयी कि इस मामले में इस बिन्दु पर कोई विवाद नहीं किया जा सकता है कि धारा 25 (एफ) का अनुपालन नहीं किया गया है अतः सेवामुक्ति आदेश ''छंटनी'' है इसलिए अस्तित्व में बने रहने योग्य नहीं है। प्रत्यर्थी के विद्वान अधिवक्ता ने यह कथन प्रस्तुत किया कि याची धारा 2 (एस) के अन्तर्गत ''कर्मकार'' नहीं था और संविदा पर उसकी सेवासमाप्ति ''छंटनी'' नहीं थी इसलिए धारा 25 (एफ) के प्राविधान लागू नहीं होते है। माननीय उच्च न्यायालय ने याची को ''कर्मकार'' माना तथा याचिका स्वीकार की एवं यह

अवधारित किया कि धारा 25 (a) और (b) का पालन नहीं हुआ था। ''राज्य'' के अधीन कार्यरत संस्थानों के सम्बन्ध में माननीय उच्च न्यायालय ने निर्णय के प्रस्तर 5 में यह अवधारित किया है, ".....that in a case of instrumentality of the State if necessity arises to terminate the services of the employees who are governed by the provisions of the I.D. Act then an effort should be made to rehabilitate them or to provide them alternative employment in other projects and if it is not possible to accommodate them recourse should be had to dispense with their services after complying with the provisions of the I.D. Act...

वर्तमान मामले में याची की सम्बद्धता केवल ''प्रोजेक्ट इम्पैक्ट'' के लिए सीमित थी अतः याची के समायोजन हेतु कोई स्थिति नहीं बनती है एवं तद्नुसार गिरिश कुमार जैन के मामले से प्रार्थी के हित में कोई मदद नहीं ली जा सकती है।

46. विपक्ष की तरफ से प्रस्तुत दशष्टान्त सी.एस. आजाद कृषि एवं प्रौद्योगिकी विश्वविद्यालय बनाम यूनाइटेड ट्रेड कांग्रेस के मामले में प्रत्यर्थी दो दिनॉक 01.07.1980 को रूपये 40/– दैनिक वेतन भोगी के रूप में विश्वविद्यालय में नियुक्त हुआ था जिसने चतुर्थ श्रेणी कर्मचारी के रूप में 31.10.1991 तक लैब असिस्टेंट–कम– अटैन्डेन्ट के रूप में काम किया परन्तु 1.11.1991 से उससे सहायक क्लर्क का काम लिया जाने लगा। प्रत्यर्थी, एक ट्रेड यूनियन ने प्रत्यर्थी दो की तरफ से औद्योगिक विवाद उठाया कि कर्मचारी की सेवायें विश्वविद्यालय द्वारा नियमित नहीं की गयीं। औद्योगिक न्यायाधिकरण के समक्ष निर्णयार्थ यह प्रश्न था कि ''क्या विश्वविद्यालय ने कर्मचारी कल्याण सिंह (विपक्षी दो) को जो क्लर्क रूप में कार्यरत है, स्थायी कर्मचारी घोषित न कर अवैधानिकता कारित की है यदि हॉ तो क्या कर्मचारी द्वारा याचित अनुतोष अधिकारिक है एवॅ किस तारीख से एवॅ किस आधार पर ?''

औद्योगिक न्यायाधिकरण के विद्वान पीठासीन अधिकारी ने विवाद को प्रत्यर्थी दो के पक्ष में निर्णित कर निर्णय की तिथि 30.5.1998 से कर्मचारी को स्थायी घोषित करने तथा अनुगामी आर्थिक लाभ प्रदान करने के लिए निर्देशित किया।

न्यायाधिकरण के निर्णय के पूर्व माननीय उच्च न्यायालय ने कुछ अन्य कर्मचारियों तथा विश्वविद्यालय के बीच विवाद से सम्बन्धित एक रिट याचिका कर्मचारियों के पक्ष में विश्वविद्यालय के विद्वान अधिवक्ता की तरफ से प्रदत्त कुछ रियायत के आधार पर निर्णित की थी। न्यायाधिकरण ने जिन आधारों पर अपने समक्ष लम्बित उक्त विवाद निर्णित किया उसमें माननीय उच्च न्यायालय द्वारा निर्णित उक्त रिट याचिका का निष्कर्ष भी आधार था।

न्यायाधिकरण के निर्णय के विरूद्ध प्रस्तुत सिविल मुतफर्का रिट याचिका माननीय इलाहाबाद उच्च न्यायालय द्वारा निम्न प्रेक्षण के साथ निरस्त की गयी :–

> "11. The University statute does not provide for appointment on daily wages or on an ad hoc basis. Respondent 2 in his written statement filed before the Industrial Court did not make any averment that he had been appointed in terms of the provisions of the statute or prior thereto any advertisement therefore was made. According to him, he being a hard working, honest, efficient and eligible employee, was "entrusted" with the work of a clerk from 1-11-1991. In his written statement, it was averred:
>
> "5. That though the worker was working against a permanent vacant post as a clerk in a permanent manner, however, the employer is not giving him the actual scale of pay and other allowances and benefits as that of a permanent clerk. However, he is still considered as a daily wager in spite of having worked since last 14 years continuously, which is illegal and wrong."
>
> "12. A feeble attempt, however, was made by the learned counsel appearing on behalf of Respondent 2 to state that he had been appointed against a permanent vacancy. In his written statement, he did not raise any such contention. It does not also appear from the records that any offer of appointment was given to him. It is inconceivable that an employee appointed on a regular basis would not be given an offer of appointment or shall not be placed on a scale of pay. We, therefore, have no hesitation in proceeding on the premise that Respondent 2 was appointed on daily wages.
>
> The Industrial Court in passing the impugned award proceeded on the premise that Respondent 2 had been working for more than 240 days continuously from the date of his engagement. It is now trite that the same by itself does not confer any right upon a workman to be regularized in service. Working for more than 240 days in a year was relevant only for the purpose of application of Section 6-N of the U.P. Industrial Disputes Act, 1947 providing for conditions precedent to retrench the workmen. In does not speak of acquisition of a right by the workman to be regularized in service."

माननीय सर्वोच्च न्यायालय के समक्ष अपील में कर्मचारी कि तरफ से यह बहस की गयी कि चर्तुथ श्रेणी कर्मी के रूप में कर्मकार ने लैब असिस्टैन्ट के स्थायी रिक्त पद पर तथा तृतीय श्रेणी कर्मचारी के रूप में क्लर्क के स्थायी पद पर लम्बी अवधि तक सेवा की है, इस प्रकार औद्योगिक न्यायाधिकरण द्वारा पारित निर्णय आदेश न्यायाधिकरण की अधिकारिता के अन्दर है। प्रत्यर्थी की तरफ से यह भी बहस की गयी कि माननीय उच्च न्यायालय के आदेश से प्रत्यर्थी से कनिष्क कर्मचारी की नियमित किये जा चुके थे अतः प्रत्यर्थी दो नियमितिकरण का हकदार था। निर्णय के विरूद्ध अपीलार्थी की तरफ से यह बहस की गयी कि नियुक्ति स्टेच्यूटरी (जंजनजवतल) नियमों के विरूद्ध थी अतः अधिकरण द्वारा नियमितिकरण का निर्देश नहीं दिया जाना चाहिए था तथा

अधिकरण घोषणात्मक व्यादेश की डिक्री पारित नहीं कर सकता। माननीय सर्वोच्च न्यायालय ने अपील स्वीकार की और यह अवधारित किया,"

> "17. The Industrial Court, therefore, in our opinion, committed a serious error in passing the impugned award. The High Court unfortunately did not pose unto itself a right question. It referred to a large number of decisions. Although most of the decisions referred to by the High Court should have been applied for upholding the contention of the appellant herein, without any deliberation thereupon, the learned Judge has proceeded to determine the question posed before it on a wholly wrong premise. As noticed hereinbefore, it relied upon Mahendra L. Jain which in no manner assists Respondent2.
>
> 18. What was necessary to be considered was the nature of work undertaken by the University. It undertakes projects. For the said purpose, it may have to employ a large number of persons. Their services had to be temporary in nature. Even for that the provisions of Articles 14 and 16 are required to be complied with. In the event, the constitutional and statutory requirements are not complied with, the contract of employment would be rendered illegal.
>
> 19. Services of Respondent 2 were not terminated. He has been continuing to serve the University. We have noticed hereinbefore that in a writ petition filed by other employees on a concession made by the counsel for the University, a purported scheme dated 24-4-2000 has been formulated. Dr. Padia in that view of the matter stated before us that of Respondent 2 comes within the purview of the said scheme, his services shall be regularized when his turn comes therefor.
>
> 20. We place on record the aforementioned statement made by Dr. Padia that as and when Respondent 2 becomes entitled to be considered for being absorbed in the services of the University pursuant to the said scheme, his case may be considered. If his turn for consideration for regularization has already come, a decision thereupon shall be taken as expeditiously as possible.
>
> 21. The impugned judgment is set aside. The appeal is allowed with the aforementioned observations and directions. However, in the facts and circumstances of this case, there shall be no order as to costs."

माध्यमिक शिक्षा परिषद के विद्वान अधिवक्ता ने माननीय सर्वोच्च न्यायालय के समक्ष स्वेच्छया पर यह जाहिर किया कि अपीलार्थी माननीय उच्च न्यायालय के पूर्व में पारित निर्णय के अनुसार जब विश्वविद्यालय की सेवा में आमेलित करने के लिए हकदार हो जाता है तब उसके मामले पर विचार किया जा सकेगा। उक्त बहस को निर्णय का हिस्सा बनाते हुए माननीय सर्वोच्च न्यायालय ने अपील खारिज की।

माननीय सर्वोच्च न्यायालय के उक्त दृष्टान्त से यह जाहिर है कि प्रार्थी/कर्मकार को उसके मामले में याचित अनुतोष न्यायाधिकरण द्वारा नहीं प्रदान किया जा सकता है क्योंकि उसकी स्थिति प्रत्यर्थीगण से बेहतर नहीं हैं एवँ प्रार्थी साक्ष्य से यह सिद्ध नहीं है कि वह विपक्ष द्वारा कभी नियुक्त किया गया है।

47. माध्यमिक शिक्षा परिषद बनाम अनिल कुमार के मामले में प्रत्यर्थीगण को अपीलार्थी ने सन् 1986 में अपने यहाँ कार्य पर इस उद्देश्य से नियत पारिश्रमिक पर अनुबन्धित किया कि वे माध्यमिक शिक्षा परिषद के सफल परीक्षार्थियों के प्रमाण पत्र तैयार करेगें जो प्रमाण पत्र छपे हुए थे और उसमें सफल परीक्षार्थियों का विवरण भरना था। 100 प्रमाणपत्रों में विवरण भरने का पारिश्रमिक 12/– था जो बढ़ाकर 20/– कर दिया गया था। विगत एक–दो वर्षों के बकाया प्रमाण–पत्र भी प्रत्यर्थीगण द्वारा तैयार किये जा चुके थे जिसका समानुपातिक भुगतान किया गया था। भविष्य में प्रमाण–पत्रों की तैयारी का कार्य कम्प्यूटरीकश्त हो जाने के कारण प्रत्यर्थीगण की सेवायें भविष्य में लगातार उपयोग योग्य नहीं रह गयी इसलिए समाप्त कर दी गयी।

सेवा समाप्ति के विरूद्ध प्रत्यर्थीगण ने रिट याचिकाएँ प्रस्तुत की जिन्हें माननीय उच्च न्यायालय ने स्वीकार की जिससे क्षुब्ध होकर अपीलार्थी ने माननीय सर्वोच्च न्यायालय के समक्ष अपील प्रस्तुत की।

माननीय उच्च न्यायालय के समक्ष प्रत्यर्थीगण की तरफ से यह बहस की गयी कि वे आकस्मिक (casual) कर्मकार थे जिन्होनें 240 दिन सेवायें पूरी की थी। सफल परीक्षार्थियों का प्रमाण–पत्र तैयार करना अपीलार्थी का statutory obligation था, प्रत्यर्थीगण/ कर्मकारों की सेवा समाप्ति विधि विरूद्ध थी और वे सेवामें पुनःस्थापना के हकदार थे। तद्नुसार माननीय उच्च न्यायालय ने रिट याचिकाएँ स्वीकार की और casual कर्मकार के रूप में प्रत्यर्थीगण को सेवा में पुनःस्थापित करने के लिए निर्देशित किया एवँ वेतन के सम्बन्ध में यह निर्देश दिया कि उन्हें वह पारिश्रमिक दिया जाय जो समान कार्य करने वाला नियमित कर्मचारी पाता है। माननीय उच्च न्यायालय ने यह भी निर्देश दिया कि प्रत्यर्थीगण को उनकी वरिष्ठता एवं शैक्षिक योग्यता के अनुसार दैनिक वेतन भोगी मजदूरी के आधार पर नियमित एल.डी.सी. के रूप में नियुक्त करने पर विचार किया जाय जब इस तरह के पद भरें जाय और उनकी सेवाएँ तब तक न समाप्त की जाय जब तक सभी सेवा में नियमित कर्मचारी के रूप में समायोजित नहीं हो जाते।

माननीय सर्वोच्च न्यायालय ने अपील स्वीकार की और निर्णय के प्रश्तर 5 में अवधारित किया,

> "5. We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an ad hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of the provision of 240 days' work. The legal consequences that flow from work for that duration under the Industrial Disputes Act, 1947, are entirely different

from what, by way of implication, is attributed to the present situation by way of analogy. The completion of 240 days, work does not, under that law import the right to regularization. It merely imposes certain obligation on the employer at the time of termination of the service. It is not appropriate to import and apply that analogy, in an extended or enlarged form here."

48. माननीय सर्वोच्च न्यायालय द्वारा उक्त दृष्टान्त की व्यवस्था से यह स्पष्ट है कि प्रत्यर्थीगण सीधे अनुबन्ध पर अपीलार्थी द्वारा अनिश्चित अवधि के लिए नियुक्त थे फिर भी उनकी सेवायें उन्हें सेवा में वापस लिये जाने के लिए पर्याप्त नहीं मानी गयी क्योंकि उनकी नियुक्ति वैधानिक तरीके से नहीं की गयी थी, अतः वर्तमान मामले में उक्त विधि व्यवस्था को दृष्टिगत रख प्रार्थी को याचित अनुतोष प्रदान नहीं किया जा सकता है। इस दृष्टान्त से यह स्पष्ट है कि प्रार्थी को नियमित करने का प्रश्न नहीं उठता है।

49. महेन्द्र एल.जैन और अन्य–अपीलार्थीगण बनाम इन्दौर डेवलपमेंट अथारिटी और अन्य –प्रत्यर्थीगण में अपीलार्थीगण 1 व 2 सिविल इन्जिनियरिंग डिग्री धारक एवं अपीलार्थीगण 3 एवं 4 सिविल इन्जिनियरिंग में डिप्लोमाधारी ने इन्दौर डेवलपमेन्ट अथारिटी में सेवार्थ आवेदन इस आधार पर प्रस्तुत की कि अथारिटी में रिक्त पद उपलब्ध है यद्यपि कोई विज्ञापन नहीं निकाला गया था। उक्त अथारिटी ने सन् 1991 में अपीलार्थीगण को नियुक्ति देकर एक ओवसीज प्रोजेक्ट, ''इन्दौर हैबीटाट प्रोजेक्ट'' में सेवार्थ संलग्न कर दिया। डिग्री धारक के लिए 63 रूपये और डिप्लामाधारक के लिए 52.50 रूपया दैनिक मजदूरी निर्धारित की गयी। लगभग 17.3.97 को या उक्त तिथि के आसपास अपीलार्थीगण 1500 रूपया प्रतिमाह पारिश्रमिक पाने लगे और उनकी वेतन से प्राविडेण्ड फण्ड की कटौती प्रारम्भ हो गयी और उन्हें अवकाश भी स्वीकृत होने लगा। विवाद उठा कि अपीलार्थीगण केवल उक्त प्रोजेक्ट के लिए नियुक्त थे या उनकी नियुक्ति अथारिटी द्वारा अपने कार्य के लिए की गयी थी। अपीलार्थीगण ने विवाद उठाया कि उनकी सेवाएं नियमित नहीं की जा रही है जिसे विचारण हेतु श्रम न्यायालय, इन्दौर को मध्यप्रदेश सरकार द्वारा सुपुर्द किया गया। श्रम न्यायालय के समक्ष विचारण हेतु निम्न दो प्रश्न प्रेषित किये गये :– 1. क्या सब इन्जिनियरों को नियमित न किया जाना वैध एवं उचित है? यदि नही ंतो वे किस अनुतोष के हकदार है और नियोक्ता को क्या निर्देश दिया जाना चाहिए? 2. क्या उक्त सब इन्जिनियरों को अन्य सब इन्जिनियर की तरह समान कार्य के लिए समान वेतन न दिया जाना वैध एवं उचित है? यदि नही ंतो वे किस अनुतोष के हकदार है और नियोक्ता को क्या निर्देश दिया जाना चाहिए? श्रम न्यायालय ने अपीलार्थीगण के पक्ष में अनुकूल एवार्ड पारित किया जिससे क्षुब्ध होकर इन्दौर डेवलपमेन्ट अथारिटी ने माननीय उच्च न्यायालय के समक्ष याचिका प्रस्तुत की जो स्वीकार हुई। अपीलार्थीगण ने माननीय उच्च न्यायालय के निर्णय के विरूद्ध सर्वोच्च न्यायालय के समक्ष अपील प्रस्तुत की जो खारिज हुई। (2004) 7 एस.सी.सी पृष्ठ –112, ए.उमरानी– अपीलार्थी बनाम रजिस्ट्रार, को ऑपरेटिव सोसायटीज और अन्य – प्रत्यर्थीगण सहित अपने अनेक पूर्व निर्णयों का अवलम्ब ग्रहण करते हुए माननीय सर्वोच्च न्यायालय ने निर्णय के प्रस्तर 19 में यह अवधारित किया है, "19 The question, therefore, which arises for consideration is as to whether they could lay a valid claim for regularization of their services. The answer thereto must be rendered in the negative. Regularisation cannot be claimed as matter of right. An illegal appointment cannot be legalized by taking recourse to regularization. What can be regularized is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A state before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the state must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularization".

माननीय सर्वोच्च न्यायालय द्वारा प्रदत्त उक्त दृष्टान्त में दी गयी विधि व्यवस्था के अनुसार प्रदर्श W/1 को प्रार्थी का नियुक्ति पत्र भी मान लिया जाय तो प्रार्थी को याचित अनुतोष प्रदान नहीं किया जा सकता है क्योंकि प्रार्थी के सन्दर्भ में संस्थान द्वारा नियुक्ति की कभी कोई प्रक्रिया नहीं अपनायी गयी और इस बात का कोई जवाब नहीं है कि किस मांग/आदेश के अनुपालन में प्रार्थी ने अपना बायो–डाटा प्रस्तुत किया था जैसा कि उसका कथन है।

50. प्रार्थी के सम्बन्ध में महेन्द्र एल.जैन और अन्य–अपीलार्थीगण बनाम इन्दौर डेवलपमेंट अथारिटी और अन्य –प्रत्यर्थीगण, माध्यमिक शिक्षा परिषद उत्तर प्रदेश बनाम अनिल कुमार मिश्रा एवं अन्य, चन्द्रशेखर आजाद कृषि एवं प्रोद्योगिकी विश्वविद्यालय बनाम यूनाइटेड ट्रेड्स कांग्रेस एवं अन्य तथा उत्तर प्रदेश राज्य बनाम नीरज अवस्थी मे माननीय सर्वोच्च न्यायालय द्वारा दी गई विधि व्यवस्था पूर्ण रूप से लागू होती है जिसके अनुसार अवैध तरीके से की गयी नियुक्तियों को नियमित नहीं किया जा सकता। प्रार्थी की संस्थान द्वारा अपने यहां कोई वैधानिक नियुक्ति नहीं की गयी है अतः प्रार्थी को सेवा में वापस लिये जाने का हक प्राप्त नहीं है। प्रार्थी को यह हक भी प्राप्त नहीं है कि अगर उसके 240 दिन की नियमित सेवा भी कर ली है इसलिये उसे विपक्षी कि सेवा में नियमित कर्मचारी के रूप में रखा जाय जैसा कि सर्वोच्च न्यायालय ने चन्द्रशेखर आजाद कृषि एवं प्रोद्योगिकी विश्वविद्यालय बनाम यूनाइटेड ट्रेड्स कांग्रेस एवं अन्य में अवधारित किया है।

51. जहॉ तक धारा 2 (एस) में राजस्थान सरकार द्वारा (नियोजक) की परिभाषा में संशोधन के आधार पर प्रार्थी को विपक्षी के नियोजन में मानकर सेवा में वापस लिये जाने का प्रश्न है इस सम्बन्ध में उल्लेखनीय है कि भारतीय संविधान के अनुच्छेद 14 एवॅ 16 की मंशा के अनुरूप विपक्षी द्वारा नियुक्ति की नियमित प्रक्रिया अपनाकर किसी व्यक्ति को नियुक्त किये जाने की दशा में ही उसे नियमतिकरण के सन्दर्भ में विपक्षी को निर्देश दिये जाने के बिन्दु पर किसी न्यायालय द्वारा विचार किया जाना विधिक रूप से संभव है। प्रार्थी के सन्दर्भ में

विपक्षी द्वारा कोई नियुक्ति प्रक्रिया अपनाकर सेवा में नहीं रखा गया है अतः इस सन्दर्भ में प्रार्थी के विद्वान प्रतिनिधि की बहस सारहीन है कि प्रार्थी को विपक्षी के नियोजन में मान लिया जाय और उसे याचित अनुतोष प्रदान किया जाय। विपक्षी की तरफ से संविदा कर्मचारीयों के सन्दर्भ में स्टील ऑथोरिटी ऑफ इण्ड़िया लिमिटेड़ – अपीलार्थीगण बनाम नेशनल यूनियन वॉटर फ्रान्ट वर्कर्स एवं अन्य का दशष्टान्त प्रस्तुत किया गया है जिसमें विचारणार्थ अन्य प्रश्नों के अतिरिक्त मुख्य प्रश्न यह था कि कॉन्ट्रेक्ट लेबर (Regulation and abolition) एक्ट 1970 के अन्तर्गत "समुचित सरकार"(Appropriate Government) द्वारा ठेकेदारों के माध्यम से सेवा देने वाले संवीदाकर्मियों के संविदा पर कार्य करने के उन्मूलन की अधिसूचना जारी करने के बाद क्या संविदाकर्मियों को स्वतः प्रधान नियोक्ता के संस्थान की सेवा में नियमित कर्मचारी के रूप में कार्यरत मान लिया जाएगा? यह मामला संविदा के आधार पर सेवा लेने की रीति के उन्मूलन से संबंधित था ? जिसे वर्तमान मामले के तथ्य एवं परिस्थितियों से कोई सम्बन्ध नहीं है और नहीं उक्त दशष्टान्त में दी गई विधि व्यवस्था का वर्तमान मामले पर कोई असर पड़ना है क्योंकि वर्तमान मामले में उक्त अधिनियम की धारा 10 के अन्तर्गत निर्गत किसी निषेधात्मक अधिसूचना के प्रश्न पर विचार नहीं होना है। अतः उक्त दशष्टान्त से वर्तमान मामले में कोई मदद नहीं ली जा सकती।

52. जहॉ तक धारा 25 जी, धारा 25 एच एवं नियम 77 के उल्लंघन का प्रश्न है इस सन्दर्भ में उल्लेखनीय है कि प्रार्थी द्वारा इस बात का कोई उल्लेख याचिका में नहीं किया गया है कि उसे हटाते समय उससे कनिष्क किस कर्मचारी को सेवा में बनाये रखा गया। इस बात का भी कोई उल्लेख नहीं किया गया है कि प्रार्थी को सेवा से हटाये जाने के बाद विपक्ष ने किसी अन्य व्यक्ति को बतौर कर्मचारी "प्रोजेक्ट इम्पैक्ट" में संविदा पर रखा है। जहॉ तक वरिष्ठता सूची विपक्ष द्वारा तैयार न करने से सम्बन्धित नियम 77 के उल्लंघन का प्रश्न है इस सन्दर्भ में उल्लेखनीय है कि प्रार्थी सदृश कर्मचारियों के सन्दर्भ में वरिष्ठता सूची तैयार करने की अपेक्षा विपक्ष से नहीं की जा सकती है। इस सन्दर्भ में माननीय सर्वोच्च न्यायालय द्वारा 2006 सुप्रीम कोर्ट (एल.एण्ड एस.), 38, सुरेन्द्र नगर जिला पंचायत – अपीलार्थी बनाम दह्याभाई अमर सिंह – प्रत्यर्थी में दी गयी विधि व्यवस्था उल्लेखनीय है जिसमें माननीय सर्वोच्च न्यायालय ने निर्णय के प्रस्तर 18 में यह अवधारित किया है "……. As regards non-compliance with section 25-G and 25-H suffice it to say that witness vinod misra examined by the appellant has stated that no seniority list was onaintained by the department of daily-wagers. In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so called seniority, no relief could be given to him for non-compliance with provisions of the Act."

53. प्रार्थी के विद्वान प्रतिनिधि की तरफ से यह बहस की गयी है कि प्रार्थी के साथ विपक्ष द्वारा अनुचित श्रम व्यवहार किया गया जो औद्योगिक विवाद अधिनियम की धारा 2 (आर.ए.) सपठित धारा 25 टी व शिडयूल 5 के क्रमांक 10 का उल्लंघन है जिसका विपक्ष द्वारा प्रबल प्रतिवाद किया गया है और यह बहस कि प्रार्थी के साथ कोई अनुचित श्रम व्यवहार नहीं किया गया है और "प्रोजेक्ट इम्पैक्ट" की समाप्ति के बाद प्रार्थी को अस्तित्व में बने रहने का कोई अधिकार नहीं था क्योंकि प्रोजेक्ट का अस्तित्व ही समाप्त हो चुका था और प्रार्थी को केवल "प्रोजेक्ट इम्पैक्ट" के लिए ही संविदा पर रखा गया था। इस सन्दर्भ में 2013 एल.एल.आर. 899(दिल्ली उच्च न्यायालय) में दी गयी विधि व्यवस्था उल्लेखनीय है जिसमें माननीय उच्च न्यायालय ने यह अवधारित किया है कि आकस्मिक अथवा अस्थायी कर्मचारियों को कार्य पर लगाना धारा 2 (आर.ए.) सपठित धारा 25 टी व शिडयूल 5 का उल्लंघन नहीं है।

54. उक्त व्याख्या व विश्लेषण के आधार पर मै इस निष्कर्ष पर हूँ कि प्रार्थी के पक्ष में प्रार्थी को सेवा में वापस लिये जाने के लिये आदेश पारित किये जाने हेतु कोई विधिसंगत स्थिति नहीं बनती है।

55. पक्षकारों के अभिवचनों तथा उसके समर्थन में प्रदत्त प्रलेखीय एवं मौखिक साक्ष्य एवं पक्षकारों द्वारा प्रस्तुत विधिक दशष्टान्तों कि उक्त व्याख्या व विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि प्रार्थी यह तथ्य सिद्ध करने में असफल है कि धारा 25 (एफ) औद्योगिक विवाद अधिनियम के प्राविधान के उल्लंघन में उसकी सेवा समाप्त की गयी, प्रार्थी विपक्षी की सेवा में नियमित रूप से नियुक्त कर्मचारी नहीं थे और उनकी सेवायें विपक्षी द्वारा संविदा के आधार पर अलग–अलग अवधि के लिये अलग–अलग आदेशों के आधार पर ली जाती रही है और इस मामले में मालवीय राष्ट्रीय प्रोद्योगिक संस्थान, जयपुर द्वारा संविदा पर आधारित प्रार्थी की सेवा में आगे विस्तार न किया जाना तथा दिनांक 29.11.2003 से प्रार्थी श्री रमेश सैनी पुत्र श्री भोरीलाल सैनी, लैब अटेण्डेंट की सेवाऐं समाप्त करना विधिक एवं न्यायानुमत है। प्रार्थी किसी अनुतोष को पाने का हकदार नहीं है। प्रार्थी की याचिका तद्नुसार खारिज की जाती है। न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तद्नुसार पारित किया जाता है।

56. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाय।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 28 मार्च, 2016

का.आ. 594.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पोस्ट ऑफिस धन्धका के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सीजीआईटीए सं. 214/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/20/99-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th March, 2016

S.O. 594.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. CGITA No. 214/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Post Office, Dhandhka and their workman, which was received by the Central Government on 09-03-2016.

[No. L-40012/20/99-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 15th February, 2016

Reference : (CGITA) No. 214/2004

Reference : (ITC) No. 138/1999

Post Master,
Station Road, Post Office,
Dhandhka, Dist,
Ahmedabad (Gujarat) ...First Party

Vs.

Their Workman
Smt. Ramanbhaben G. Mali,
Ambapura,
Botadara ni Sherim
Dhandhuka Distt.,
Ahmedabad(Gujarat) ...Second Party

For the First Party : Shri P.M. Rami, Advocate

For the Second Party : Kum. Ashaben Gupta, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L- 40012/20/99-IR(DU) dated 21.07.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the postal Department, Dhandhuka is legal & justified in terminating the services of Smt. Rambhaben Gandalal Mali, Water woman? If not, to what relief the workman is entitled?"

2. This reference dates back to 21.07.1999. Both the parties were served. Second party filed statement of claim (Ext.5) on 22.10.1999. First party filed his written statement (Ext.8) on 24.07.2000. Thereafter second party did not give the evidence despite giving number of opportunities. Thus, it appears that second party is not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 मार्च, 2016

का.आ. 595.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, जामनगर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सीजीआईटीए सं. 1090/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2016 को प्राप्त हुआ था।

[सं. एल-40012/55/97-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th March, 2016

S.O. 595.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Ref. CGITA No. 1090/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom Department, Jamnagar and their workman, which was received by the Central Government on 09-03-2016.

[No. L-40012/55/97-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 24th February, 2016

Reference : (CGITA) No. 1090/2004

Reference : (ITC) No. 20/1998

1. The District Engineer Telecom,
Telecom Deptt.,
Jamnagar

2. The Sub Divisional Officer,
Telegraph,
Telecom Deptt.,
Junagadh-362001 ...First Party

Vs.

Their Workman,
Shri Nirmal Kumar
C/o. Saurastra Employees Union,
Umesh Commercial Complex,
Office No. 213 & 214, 2nd Floor,
Near Chaudhary High School,
Rajkot-360001 ...Second Party

For the First Party : Shri H.R. Raval, Advocate

For the Second Party : C/o. Saurastra Employees Union

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-40012/55/97-IR(DU) dated 24.03.1998 referred the dispute for adjudication to the Industrial Tribunal, Rajkot(Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the manamgent of District Engineer, Telecom Deptt., Jamnagar in terminating the services of Sh. Nirmal Kumar is legal and justified? If not, to what relief the workman is entitled to?"

2. This reference dates back to 24.03.1998. Second party filed statement of claim (Ext.2) first party filed the written statement on 08.01.2003. Second party has been absent since last several dates and has also not led evidence despite giving number of opportunities. Thus, it appears that second party are not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 28 मार्च, 2016

का.आ. 596.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ टेलीकम्यूनिकेशन, राजकोट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सीजीआईटीए सं. 1130/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.03.2016 को प्राप्त हुआ था।

[सं. एल-40011/9/95-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 28th March, 2016

S.O. 596.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Ref. CGITA No. 1130/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom Department, Rajkot and their workmen, which was received by the Central Government on 09-03-2016.

[No. L-40011/9/95-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 18th February, 2016

Reference : (CGITA) No. 1130/2004

Reference : (ITC) No. 37/1998

1. The General Manager,
Telecom District,
Amruta Estate,
Near Girnar Cinema,
Rajkot-360001 ...First Party

Vs.

Their Workman
Through the President,
Saurastra Employees Union,
'Baba Ama'10/5, Junction Plot,
Swami Tahiliaram Marg,
Rajkot-360001 ...Second Party

For the First Party : Shri H.R. Raval, Advocate

For the Second Party : Shri Anand Gogia, Advocate

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L- 40011/9/95-IR(DU) dated 13.05.1998 referred the dispute for adjudication to the Industrial Tribunal, Rajkot (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of general Manager, Telecom District, Rajkot in terminating the services of Shri Ramesh Kanjibhai Dabhi w.e.f. 1.6.85 is legal and justified? If not, to what relief the workman is entitled to?"

2. This reference dates back to 13.05.1998. Second party has moved an application (Ext.23) along with the death certificate indicating that the second party has expired on 01.11.2007 and the father of the second party has instructed to not press the case. Hence, Tribunal has no option but to dismiss the reference.

The reference is dismissed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 597.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑप्टो इलेक्ट्रॉनिक्स फैक्ट्री, देहरादून के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ सं. 12/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.02.2016 को प्राप्त हुआ था।

[सं. एल-14012/29/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 29th March, 2016

S.O. 597.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 12/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Opto Electronics Factory, Dehradun and their workman, which was received by the Central Government on 28-02-2016.

[No. L-14012/29/2014-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID. No. 12/2015

Sh. Devender S/o Late Sh. Satender Singh,
R/o 5/117, Chander Road,
Nai Basti (Rajesh Colony),
PO-Dalanwala,
Dehradun-248001.

VERSUS

The General Manager,
Opto Electronics Factory,
Raipur Road,
Dehradun-492001.

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide Letter No.L- 14012/29/2014 (IR(DU)) dated 30.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication :-

> "Whether Shri Devender's case holds merit for consideration for appointment on compassionate ground being the earliest case among the equal three? If so, the management of OEF, Dehradun, should process accordingly in a fixed time period.

On 11.03.2015 reference was received in this tribunal. Which was register as I.D No. 12/2015 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement / Response to the reference.

In this background there is no option to this tribunal except to pass No Dispute Award because parties are not interested to file their respective pleadings.

On the basis of which none of the party can be directed to adduce its evidence. As it is case of no pleadings and evidence of claimant. So No dispute Award is liable to be passed.

No Dispute Award is accordingly passed.

Dated:-08/02/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 598.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सोल्टेक इन्सुलेशन प्राइवेट लिमिटेड एंड अदर्स के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ आईडी सं. 31/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.03.2016 को प्राप्त हुआ था।

[सं. एल-40011/16/2015-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 29th March, 2016

S.O. 598.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID Ref. No. 31/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to

the management of the M/s. Soltek Insolation Pvt. Ltd. and Others and their workman, which was received by the Central Government on 28.03.2016.

[No. L-40011/16/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 31 of 2015

Parties :

Employers in relation to the management of M/s. Soltek Insolation Pvt. Ltd.

AND

Their workmen

Present :

Justice Dipak Saha Ray, Presiding Officer

Appearance :

On behalf of the Management	:	Mr. C.K. Chandra, Ld. Counsel with Mr. S. Bhattacharya Ld. Counsel for both M/s. Soltek Insolation Pvt. Ltd. and M/s. Environ Energy Corp India Pvt. Ltd. None for M/s. VIOM Networks Limited.
On behalf of the Workmen	:	None

State: West Bengal Industry: Telecommunication

Dated: 8th March, 2016

AWARD

By Order No.L-40011/16/2015-IR(DU) dated 05.06.2015/11.06.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> "Whether the action of the management of M/s. Environ Energy Corp. India Pvt. Ltd., contractor of M/s. VIOM Networks Limited by terminating the services of Shri Budhadev Kundu and Sri Niranjan Pandit is justified or not? If not, what relief the workmen are entitled?"

2. When the case is taken up for hearing today, none appears on behalf of the union, though the managements viz. M/s. Soltek Insolation Pvt. Ltd. and M/s. Environ Energy Corp India Pvt. Ltd. are represented by their respective Ld. Counsel. It appears from the record that none also appeared on behalf of the union for the last three dates. In fact the union at whose instance the present reference case has been initiated, has never turned up before this Tribunal since the initiation of this reference.

3. From such conduct of the union it may reasonably be presumed that the union is not at all interested about this case. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above facts and circumstances, present reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 8th March, 2016

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 599.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 अप्रैल, 2016 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध हिमाचल प्रदेश राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रम सं.	राजस्व ग्राम का नाम/क्षेत्र	हदबस्त संख्या/होबली	तहसील/ तालुक	जिला
1.	चामियां	4	कसौली	सोलन
2.	कसौली	99	कसौली	सोलन
3.	मशोबरा	158	कसौली	सोलन
4.	कीमू घाट	154	कसौली	सोलन
5.	कसौली (छावनी)	395	कसौली	सोलन
6.	सनवारा	396, 104, 106	कसौली	सोलन
7.	मंगोटी	105	कसौली	सोलन
8.	मण्डो मारकण्डा	107	कसौली	सोलन
9.	चब्बल	715	कसौली	सोलन
10.	शलोरा खुर्द	956	कसौली	सोलन
11.	छोटियां	157	कसौली	सोलन
12.	गड़खल	713	कसौली	सोलन

[सं. एस-38013/17/2016-एस.एस. I]

अजय मलिक, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 599.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State

Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April 2016 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Himachal Pradesh namely :—

Sl. No.	Name of the Villages/Area*	Had Bast No./Hobli*	Tehsil	District
1.	Chamiya	4	Kasauli	Solan
2.	Kasauli	99	Kasauli	Solan
3.	Mashobra	158	Kasauli	Solan
4.	Kimu Ghat	154	Kasauli	Solan
5.	Kasauli (Cantt.)	395	Kasauli	Solan
6.	Sanwara	396, 104, 106	Kasauli	Solan
7.	Mangoti	105	Kasauli	Solan
8.	Mando Markanda	107	Kasauli	Solan
9.	Chabbal	715	Kasauli	Solan
10.	Shalora Khurd	956	Kasauli	Solan
11.	Chotiyan	157	Kasauli	Solan
12.	Garkhal	713	Kasauli	Solan

[No. S-38013/17/2016-S.S. I]

AJAY MALIK, Under Secy.

नई दिल्ली, 29 मार्च, 2016

का.आ. 600.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा 1 अप्रैल, 2016 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले से प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उप-धारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी हैं] के उपबंध पश्चिम बंगाल राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

क्रम सं.	राजस्व क्षेत्र/ मौजा के नाम	जे.एल. संख्या	नगरपालिका/ ग्राम पंचायत	जिले के नाम
1.	खगराबारी	89	खगराबारी ग्राम पंचायत	कूचबिहार
2.	बैशगुरी	105	चाकचाका ग्राम पंचायत	कूचबिहार
3.	कोनामाल्ली पेशतारझार	160	चाकचाका ग्राम पंचायत	कूचबिहार
4.	चाकचाका	107	चाकचाका ग्राम पंचायत	कूचबिहार
5.	एयरपोर्ट	125	कूचबिहार नगर पालिका	कूचबिहार
6.	न्यू टाउन	106	कूचबिहार नगर पालिका	कूचबिहार
7.	सहर कूचबिहार	130	कूचबिहार नगर पालिका	कूचबिहार

[सं. एस-38013/18/2016-एस.एस. I]

अजय मलिक, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 600.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st April 2016 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter-V and VI [except sub-section (1) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of West Bengal namely :—

Sl. No.	Name of Revenue Area/Mouza	J.L. No. Panchayat	Name of Municipality/	Name of District
1.	Khgrabari	89	Khgrabari Gram Panchayat	Coochbehar
2.	Baishguri	105	Chakchaka Gram Panchayat	Coochbehar
3.	Konamalli Pestarjhar	106	Chakchaka Gram Panchayat	Coochbehar
4.	Chakchaka	107	Chakchaka Gram Panchayat	Coochbehar
5.	Airport	125	Coochbehar Municipality	Coochbehar
6.	New Town	126	Coochbehar Municipality	Coochbehar
7.	Sahar Coochbehar	130	Coochbehar Municipality	Coochbehar

[No. S-38013/18/2016-S.S. I]

AJAY MALIK, Under Secy.

नई दिल्ली, 29 मार्च, 2016

का.आ. 601.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई.एस. आई. अस्पताल और दूसरे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 33/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-15011/3/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 601.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2014) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ESI Hospital and Other and their workman, which was received by the Central Government on 23-03-2016.

[No. L-15011/3/2013-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 33/2014

Smt. Allah Piari, through
The General Secretary,
Rashtriya Rajdhani Shetra Engg. &
General Mazdoor Union,
C-139, Karampura,
New Delhi ...Workman

Versus

1. The Manager,
M/s. ESI Hospital,
Sector 15, Rohini,
New Delhi 110 085

2. The Manager,
M/s. Vishakha Enterprises,
30/42, Street No.8, Main Road,
Opposite Andhra Bank, Vishwas Nagar,
Shahdara,
Delhi 110 015 ...Managements

AWARD

Central Government, vide letter No.L-15011/3/2013-IR(M) dated 18.02.2014, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of M/s. Vishakha Enterprises in terminating the services of Smt. Allah Piari, W/o late Shri Murari, Ex. House Keeper with effect from 13.01.2013, is justified or not? If not, what relief will be given to the workman and from which date?

2. Claim statement was filed by the workman and written statements were filed by both the managements and rejoinder was filed on behalf of the workman. Thereafter, the case was listed admission/denial of documents and to ascertain the real nature of controversy between the parties. However, despite affording various opportunities to the workman, neither the workman nor any authorized representative on his behalf appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated: March 16, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 602.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इम्प्रीजन सर्विसेज प्रा. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 88/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-11011/6/2014-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 602.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 88/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Impression Services Pvt. Ltd. and their workman, which was received by the Central Government on 23-03-2016.

[No. L-11011/6/2014-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT NO.1, DELHI

ID No. 88/2015

Shri Dinesh & 9 others, through
The General Secretary,
Hindustan Engineering &
General Mazdoor Union,
A-193, Karampur,
New Delhi 110 015 ...Workman

Versus

The Manager,
M/s Impression Services Pvt. Ltd,.
Terminal 3, Indira Gandhi
International Airport,
New Delhi ...Management

AWARD

A reference was received from Government of India, Ministry of Labour vide order No.L-11011/6/2014-IR(M) dated 18.02.2015 with the following terms:

> "Whether the action of the management of M/s Impression Services Pvt. Ltd. in not paying subsistence allowance to ten suspended workmen namely, S/Shri Dinesh, Mukesh, Saroj, Asaf Ali, M.D. Chunna, Vikram, Subhajas, Rakesh, Smt.Bharati and Smt. Shiksha with effect from 29.01.2014 for not reporting at a place other than the place of work every day is legal and justified? If not, what relief are the workmen entitled to?"

2. Both parties were put to notice and claimants herein filed statement of claim wherein it is averred that they have been working and doing the job of house keeping with the management, details of which are given in para 1 of the statement of claim. Workmen have been performing their duties sincerely ;and diligently. On 29.01.2014 management intentionally with a view to get rid of the workmen refused to mark their presence at the place of their duties. Workmen, S/Shri Mukesh, Dinesh and Vikram were served with show cause notice on 02.06.2014 and they have submitted reply to the said notice on 21.06.2014. It is clear from the said notice that the workmen have been placed wrongly under suspension. Thereafter, they were not allowed to mark their attendance at the gate of the office after 29.06.2014. Workmen were also not given any subsistence allowance of 50% as required under the law. Management was asking the working to mark their presence sometimes at Gurgaon and sometimes at Kirti Nagar whereas the place of duty of the workmen herein was at Terminal No.3, Indira Gandhi International Airport. Thus, all the 10 workmen were not allowed to mark their presence at the gate of Terminal No.3 nor have been paid any kind of subsistence allowance till date.

3. Workmen on 08.10.2014 demanded subsistence allowance for the period for which they were placed under suspension and thereafter approached the Assistant Labour commissioner for redressal of their grievances. Management had filed reply with the Assistant Labour commissioner. However matter could not be resolved as a result of which the above reference was made by the Central Government to this Tribunal. Management did not put in their appearance despite notice. As such, they were proceeded ex-parte vide order dated 08.07.2015. Even thereafter nobody has appeared on behalf of the management.

4. Workmen in order to prove their case against the management examined Shri Mukesh as WW1, who has tendered his affidavit Ex.WW1/A, which is on similar lines as the averments contained in the statement of claim. Workman has also tendered in evidence documents/letters Ex.WW1/1 to Ex.WW1/10.

5. I have heard Shri Kailash Kumar, authorized for the claimant.

6. It is clear from the evidence from demand letter Ex.WW1/1 that the workmen were working at Terminal No.3 of the Airport with the management. Demand letter further shows that when the workmen impressed upon the management to make them regular, then the management in a calculated manner after 29.06.2014 refused to allow the workmen to mark their attendance. There is another letter Ex.WW1/3 wherein reference of letter dated 16.04.2014 is made and name of the workmen herein also find mention in the said letter . From para 3 of the said letter, it is clear that there is reference to payment of subsistence allowance. However, the workmen were not given any allowance as they did not obey order of the management. There is also reference to letter dated 24.03.2014 and it is clear from overall examination of this letter that the same was written by the General Manager for Impression Services Ltd. to the Assistant Labour Commissioner when the workmen had taken the matter for adjudication with the Government. Letter Ex.W1/4 is written by the workmen herein which shows that the management was not allowing the workmen herein to mark their attendance on 29.06.2014. Workman has also tendered in evidence the demand put forth by the union vide Ex.WW1/5 dated 22.03.2014 regarding non payment of subsistence allowance and refusal by the management to mark attendance of the workmen. There is another letter Ex.WW1/10 by the General Secretary of the Union to Regional Labour Commissioner which shows that the workmen have been wrongly ordered to join office at different places and the same amounts to varying conditions of service. Letter Ex.WW1/11 shows that efforts were made by the Assistant Labour Commissioner, Government of India for resolution of the dispute. However, success in the same could not be achieved as a result of which matter was referred in the manner stated above to this Tribunal for adjudication.

7. It is apparent from the pleadings as well as documents on record that the workmen herein were deployed on duty at Terminal 3 of Indira Gandhi International Airport and were doing service under the management as house keeping staff. Workmen have also filed photocopy of Identity Cards, which also supplements their ase. Reference question also shows that the workmen were in employment of the management, M/s. impression Services Pvt. Ltd. to whom work of outsourcing appears to have been given by Airport Authority of India and were doing the work of house keeping since long.

8. It is further clear from the record that after 29.06.2014, the workmen were not allowed to mark their presence at the original place of work and this has also resulted in suspension of the workmen. Now, the vital question which requires adjudication is whether the workmen are entitled for subsistence allowance after their suspension. During the course of arguments, the learned authorized representative for the workmen invited attention of the Court to the Industrial Employment (Standing Orders) Act, 1946. Section 10(a) of the said Act reads as under:

> 10-A. Payment of subsistence allowance.
>
> (1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance-
>
> (a) at the rate of fifty per cent of the wages which workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and
>
> (b) at the rate of seventy-five per cent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.
>
> (2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947 (14 of 1947), within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.
>
> (3) Not withstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

9. Thus, it is clear from bare perusal of the aforementioned provisions, that the workmen are entitled for grant of subsistence allowance during the period of their suspension. Even under the general law, an employee is entitled for subsistence allowance during the period of his suspension. There is nothing on record to suggest that any subsistence allowance has been to the workmen herein nor the management has filed any documents to show whether the workmen herein were ordered to mark their attendance at different places, i.e Gurgaon, Kirti Nagar etc. Since the management has not filed any reply nor adduced any evidence in response to the reference made by the Central Government, as such, this Tribunal is left with only the evidence of the workmen. There long list of decisions that in case subsistence allowance is not paid to a workman, in that eventuality, order of suspension itself becomes malafide and the employee is entitled to be reinstated. In the present case, there is no order of suspension on the record so as to show under what circumstances the workmen herein were placed under suspension. Accordingly, it is held that the workmen herein are entitled for grant of subsistence allowance in terms of provisions of Section 10(A)of the Industrial Employment (Standing Orders) Act, 1946. As a necessary corollary, it is also held that workman shall be deemed to be in service and would be entitled to back-wages from the date of their suspension till date as the workman herein remained unemployed during the period. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated: March 16, 2016

A. C. DOGRA, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 603.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स राजस्थान स्टेट माइन्स एण्ड मिनरल्स लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 41/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-29012/9/2015-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 603.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2015) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Rajasthan State Mines and Minerals Ltd. and their workman, which was received by the Central Government on 23-03-2016.

[No. L-29012/9/2015-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 41/2015

Reference No.L-29012/9/2015-IR(M) dated: 10.4.2015

Shri Omkar
S/o Sh. Bhaggaji Gameti
Kharbaria Tehsil Girva
Distt. Udaipur
Udaipur

V/s

The General Manager
Rajasthan state Mines and Minerals Ltd.
Jhamarkotda, HO 4 Mira Marg,
Udaipur

AWARD

22.1.2016

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2(A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

> "Whether the action of the management of M/s. Rajasthan state Mines & Minerals Ltd., Udaipur (Raj.) in terminating the services of Shri Omkar S/o Sh. Bhaggaji Gameti w.e.f. 30.6.2012 is legal and justified? If not, what relief the concerned workman is entitled for?"

2. Pursuant to the receipt of the reference order, registered notices were issued to the parties as per the order of the tribunal fixing 17.9.2015 for filing statement of claim. On 17.9.2015 applicant was absent, Sh. Ripan Sandhu, Officer in-charge was present for & on behalf of opposite party. Notice sent to the applicant was served against him & acknowledgement attached to the notice was back & the same is available on record of the file. In the interest of justice the case was adjourned & 7.12.2015 was fixed for filing statement of claim.

3. On 7.12.2015 both the parties were absent. In the interest of justice case was again adjourned providing opportunity to the applicant for filing statement of claim. Next date 24.12.2015 was fixed for filing claim. After order Sh. Anil Sharma appeared for opposite party but authority of opposite party was not filed by him.

4. 24.12.2015 & 25.12.2015 was a public holiday & 26.12.2015 & 27.12.2015 was Saturday & Sunday, hence, file was taken up on 28.12.2015. On 28.12.2015 both the parties were absent & presiding officer was on leave. Next date 18.1.2016 was fixed again for filing statement of claim by applicant.

5. On 18.1.2016 both the parties were absent. From perusal of file it appeared that applicant was served on 9.9.2015 but till 18.1.2016 none appeared from his side to file statement of claim. Looking into the fact that applicant is not taking any interest in filing statement of claim despite several opportunities provided to him, further opportunity for filing statement of claim was closed & case was reserved for award.

6. It is pertinent to note that reference order dated 10.4.2015 was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on notice & knowledge of the proceeding pending before the tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of material evidence brought on record, tribunal is unable to record the finding on the issues referred to it on merit. Accordingly, "No Claim Award" is passed in this matter. The reference under adjudication is answered accordingly.

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 604.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 33/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30012/65/2006-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 604.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2007) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-30012/65/2006-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23th February, 2016

Reference : (CGITA) No. 33/2007

1. The Asset Manager,
ONGC Ltd.,
Ankleshwar Project,
(Gujarat)

2. M/s Nirmal construction,
73, Virat Nagar Society,
Ankleshwar

3. M/s Techno Fab,
T-14, Nirant Nagar,
Bor Bhata Road,
Ankleshwar-393001 ...First Party

Vs.

Their workmen
Through the General Secretary,
Akhil Gujarat Kamdar Hithvardhak Union,
Bhaktinagar Socirety, Maktampur,
Bharuch ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : C/o. Akhil Gujarat Kamdar Hitvardhak Union

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30012/65/2006-IR(M) dated 08.03.2007 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of M/s Techno Fab, Ankleshwar, Contractor of ONGC Ltd., Ankleshwar in terminating the services of Smt. Sumitraben Bhikhabhai Somiya w.e.f. 1/11/2005 is legal, proper and just? If not, to what relief the concerned workman is entitled to?"

2. This reference dates back to 08.03.2007. Both the parties are served. First party also field the Vakalatanam (Ext.4) of their advocate. But despite service on the second party neither turn up for filing the statement of claim nor put in his appearance. Thus, it appears that second party has no inclination or willingness to proceed with the reference. Thus, the Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 605.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 94/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30012/14/2007-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 605.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2007) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-30012/14/2007-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 24th February, 2016

Reference : (CGITA) No. 94/2007

1. M/s Industrial Security Services,
2, Saraswati Society,
Near Cruth Sobha Furniture,
D-cabin, Sabarmati,
Ahmedabad (Gujarat)- 380001

2. The Insttitutre of Reservoir Studies,
ONGC Ltd.,
Avani Bhavan,

Chandkheda,
Ahmedabad (Gujarat)-

3. The G.G.M.,
ONGC Ltd.,
6th Floor, Avani Bhavan,
Chandkheda,
Ahmedabad (Gujarat) ...First Party

Vs.

Their Workman,
Sh. Savabhai MeghabhaiWagela
Nayaka Tampe, Managevpura,
Taluka Kheda,
Post Nayala-50 ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : Shri D.D. Pandya, Advocate

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30012/14/2007-IR(M) dated 25.09.2007 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of ONGC in terminating the service of Shri Savabhai Meghabhai Waghela effect from 04/10/2003 without following the provisions of section 25F and 25G of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workman is entitled to and to what extend?"

2. This reference dates back to 25.09.2007. Second party submitted statement of claim (Ext.15) on 05.02.2009 and first party submitted written statement (Ext.17) on 05.03.2010.

3. Second party has been absent since last several dates and has also not led evidence despite giving number of opportunities. Thus, it appears that second party are not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 606.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 212/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30012/16/1999-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 606.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 212/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-30012/16/1999-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 26th February, 2016

Reference : (CGITA) No. 212/2004

Reference : (ITC) No. 134/1999

1. The Group General Manager,
ONGC Ltd.,
Avani Bhavan, Parichay Shopping Centre,
D Cabin, IOC office Road,
Gandhinagar

2. M/s. Industrial Security Services,
Parichay Shopping Centre,
D Cabin, Sabarmati,
Ahmedabad (Gujarat) ...First Party

Vs.

Their Workman,
Through the General Secretary,
Gujarat Petroleum Emp. Union,
434/46. Gandhi vas Naka,
Gujarat Stadium Road,
Sabarmati,
Ahmedabad (Gujarat) ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : C/o. Gujarat Petroleum Emp. Union

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30012/16/99-IR(M) dated 12.07.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the management of Industrial Security Services, Contractor of ONGC Ltd., is justified in terminating the services of Shri Jivabhai Hirabhai Desai, Security Guard, ONGC Ahmedabad Project w.e.f. 1-9-97? If not, to what relief the concerned workman is entitled to?" AND "Whether ONGC Ltd., Ahmedabad is having sham arrangement of contract with M/s industrial Security Services in employment of security guards at ONGC Ltd., Ahmedabad Project and how far ONGC is responsible for termination of service of Shri Jivabhai Hirabhai Desai, Security Guard?"

2. This reference dates back to 12.07.1999. S.P in person has been absent since last several dates. However, his counsel comes in the Tribunal and he fails to produce the workman for examination in support of his case i.e. statement of claim(Ext.4) which has been controverted by the first party through the written statement (Ext.9) on 04.10.2000. Thus, it appears that second party are not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 607.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 222/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30012/30/1999-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 607.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 222/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-30012/30/1999-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 24th February, 2016

Reference : (CGITA) No. 222/2004

Reference : (ITC) No. 148/1999

1. The Regional Director,
ONGC Ltd.,
Makarpura Road,
Baroda ...First Party

Vs.

Their Workman,
Through the secretary,
ONGC Employees Union,
8, Samarpan Shopping Complex,
Highway Road,
Mehsana (Gujarat)- 384002 ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : Shri A.S. Kapoor, Advocate

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30012/30/99-IR(M) dated 10.09.1999 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of ONGC Employees Union in asking promotion of Shri Bhikhaji Panaji Khalasi Gd. I in the upgraded scale of Rs. 2532/- w.e.f. 1.1.93 with all consequential benefits is justified? If so, what relief the workman is entitled to?"

2. This reference dates back to 10.09.1999. Second party submitted statement of claim (Ext.7) on 03.01.2000 and first party submitted written statement (Ext.9) on 13.11.2000. Second party has been absent since last several dates and has also not led evidence despite giving number of opportunities. Thus, it appears that second party are not

interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second party

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 608.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 275/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30012/78/1999-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 608.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 275/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-30012/78/1999-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd February, 2016

Reference : (CGITA) No. 275/2004

Reference : (ITC) No. 26/2000

1. The Group General Manager (P),
ONGC Ltd., Avni Bhavan,
Chandkheda,
Ahmedabad (Gujarat)

2. M/s. Tarun Enterprises,
Tarun House, Kajuwadi Chakla,
Andheri (East),
Mumbai ...First Party

Vs.

Their workman
Through the General Secretary,
Gujarat Petroleum Employees Union,
434/36, Gandhvas, Koba Road,
Sabarmati,
Ahmedabad (Gujarat) ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : Kum. Santoshben, Advocate

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30012/78/99-IR(M) dated 24.01.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of Gujarat Petroleum Employees Union, Ahmedabad to declare that the arrangement through which Shri Kanubhai D. Rabari employee as Mali in ONGC, Ahmedabad Project is 'sham and bogus' and the concerned workman who has been terminated from service w.e.f. 1.2.1999 id entitled for reinstatement and absorption is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?"

2. This reference dates back to 24.01.2000. Second party submitted statement of claim (Ext.8) and first party submitted written statement (Ext.11) on 06.04.2004 since then second party has failed to lead evidence. Second party has also been absent for a long period back to 2010. Thus it appears that second party has no inclination or willingness to proceed with the reference. Thus, the Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 609.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 327/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30012/30/2000-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 609.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 327/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-30012/30/2000-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd February, 2016

Reference : (CGITA) No. 327/2004

Reference : (ITC) No. 88/2000

1. The Group Genral Manager (P),
ONGC Ltd.,
Ahmedabad Project,
Chandkheda,
Ahmedabad (Gujarat)

2. M/s. Public Power Mazdoor
Kamdar Sahkari Mandli Ltd.,
Opp. Dudhsagar Dairy,
Highway Road,
Mehsana (Gujarat)

3. M/s. Industrial Security Services,
Parischay Shopping Centre,
Near 'D' Cabin, IOC Road,
Post New Rly Colony,
Ahmedabad (Gujarat)- 380001 ...First Party

Vs.

Their workman
Through the General Secretary,
Gujarat Petroleum Employees Union,
434/36, Gandhvas, Koba Road,
Sabarmati,
Ahmedabad (Gujarat) ...Second Party

For the First Party : Shri K.V. Gadhia, Advocate

For the Second Party : Kum. Santoshben, Advocate

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/30/2000-IR(M) dated 18.08.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of Gujarat Petroleum Employees Union, Ahmedabad to declare that the arrangement through which Shri Nayak Jagdish Ambalal employed as Peon in ONGC Ahmedabad Project is 'sham and bogus' and the concerned workman who has been terminated from service w.e.f. 1.2.1999 is entitled for reinstatement and absorption is legal and justified? If yes then to what relief the concerned workman is entitled to and from which date?"

2. This reference dates back to 18.08.2000. Second party submitted statement of claim (Ext.6) and first party also filed written statement (Ext.10) on 03.05.2002. Second party also received the copy of the written statement on the same date. But since then second party has been absent and has also failed to lead evidence. Thus, it appears that second party has no inclination or willingness to proceed with the reference. Thus, the Tribunal has no option but to dismiss the reference in default of the second party.

The reference is dismissed in default of the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 610.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 574/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-30011/91/2002-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 610.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 574/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and Others and

their workman, which was received by the Central Government on 23-03-2016.

[No. L-30011/91/2002-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 24th February, 2016

Reference : (CGITA) No. 574/2004

Reference : (ITC) No. 48/2003

1. The Group General Manager (P),
ONGC Ltd.,
Hazira Project,
P.O. Bhatpore,
Surat (Gujarat) 394518

2. The Manager (PSD),
Te A.Eco. Ltd.,
Chinubhai Tower,
Ashram Road,
Ahmedabad(Gujarat)-380009

3. M/s. Gaytech Engineering Services,
311, Race Course Tower,
Nr. Race Course Circle,
Baroda-

4. M/s. Industrial & Engineering Services,
74/441, Vijaynagar,
Ahmedabad (Gujarat)-380013

5. M/s. AJK Association,
B-4 Kailash Apartments,
Opp. Dr. Suman Shah,
Nr. Old Sharda Mandir Road,
Elliesbridge, Ahmedabad
(Gujarat)-380006 ...First Party

Vs.

Their Workman,
Through Gujarat Working Class Union,
The General Secretary,
A-772, 'Anand Ganga' Kasak,
Bharuch (East), Gujarat
Bharuch ...Second Party

For the First Party : Shri C.S. Naidu, Advocate

For the Second Party : C/o Gujarat Working Class Union

AWARD

The Government of India/Ministry of Labour ,New Delhi by reference adjudication Order No. L-30011/91/2002-IR(M) dated 21.10.2003 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the contracts between the management of ONGC Ltd. and their Contractors in respect of Shri Raval Sanjaykumar K. & 9 others is sham and bogus contracts entered into as a camouflage to avoid the provisions of contract Labour (Regulation and Abolition)) Act, 1970?"

"Whether the demand of the union in respect of 10 contractual workmen i.e. S/Shri (1) Raval Sanajy Kumar K., (2.) Travadi Arif F., (3) Patel Paresh M., (4.) Parekh Sandip R., (5) Pawar Jitendra H., (7) Varachhiya Vijay B., (8) Pathan Gafarali M., and (9) Joshi Nitin N. Bioler Operators engaged through various contractors in the establishment of ONGC Ltd. Hazira, Surat for treating them as direct and regular employees of ONGC Ltd., from the date of their joining, is legal, proper and justified? If so, to what relief these workmen are entitled to and from which date and what other directions are necessary in the matter?"

2. This reference dates back to 21.10.2003. Second party submitted statement of claim (Ext.5) on 28.04.2004 and first party submitted written statement (Ext.9) on 10.03.2005. since then the second parties have been absent and have also not led their evidence. Thus, it appears that second parties are not interested in the proceedings of the reference. Therefore, Tribunal has no option but to dismiss the reference in default of the second parties.

The reference is dismissed in default of the second parties.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 29 मार्च, 2016

का.आ. 611.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स खनिज अन्वेषण निगम लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 66/2013-14) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.03.2016 को प्राप्त हुआ था।

[सं. एल-29011/45/2013-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 29th March, 2016

S.O. 611.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 66/2013-14) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Mineral Exploration Corporation Ltd. and Others and their workman, which was received by the Central Government on 23-03-2016.

[No. L-29011/45/2013-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

IN CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NAGPUR

BEFORE SHRI CHINTA MANI TIWARI, PRESIDING OFFICER

Case No. CGIT/NGP/66/2013-14 Date: 20.01.2016.

Party No. 1 : The Chairman-cum-Managing Director, Mineral Exploration Corporation Ltd., Dr. Babasaheb Ambedkar Bhawan, Seminary Hills, Nagpur-440006.

Party No. 2 : The General Secretary, Indian National M.E.C. Employees Union, MECL Utilities Complex, Seminary Hills, Nagpur – 440006.

AWARD

(Dated: 20th January, 2016)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute for adjudication between the management of (The Chairman-cum-Managing Director, Mineral Exploration Corporation Ltd. and the General Secretary, Indian National M.E.C. Employees Union, MECL) vide letter No.L-29011/45/2013-IR(M) dated 23.08.2013, on the following schedule:-

> "Whether the action of the management of Mineral Exploration Corporation Ltd., Nagpur in refusing he restoration of payment of conveyance charge/ Hingna Allowance to the personnel deployed at C.S.D., Hingna, MIDC area, Nagpur, is legal and justified? If not, what relied the employees are entitled to?"

2. On receipt of the reference, notices were issued to parties to file claim and written statement.

3. Party No. 2 has filed statement of claim for issuing direction to Party No. 1 to revise the Hingna Allowance from April, 1998 to make payment thereof to all employees entitled and also issue direction to Party No. 1 to revise Hingna Allowance and implement the revised rates with effect from 01.01.2010.

4. In reply Party No. 1 denied the claim of Party No. 2 and refused to restoration of above allowances.

5. Meanwhile the management of Mineral Exploration Corporation Ltd. and their registered union in company namely (1). Indian National Mineral Exploration Corp. Employees Union (2). Minexplore Employee's Democratic Union (3). Mineral Exploration corporation employees Union arrived at settlement for re-opening and revision of Transportation Allowance (Hingna allowance) under Section 2(p) and Section 18 (1) of Industrial Disputes Act, 1947 read with Rules 58(1) of Industrial Disputes Rules 1957. Party No. 1 has filed the memorandum f settlement as annexure-I and extract of minutes as annexure – II alongwith 236th Board Meeting Agenda, Item No. 8 dated 23.05.2015 with application on request that present reference shall be disposed off as per memorandum of settlement dated 04.03.2015(annexure-I).

Party No. 2 has no objection if reference shall be disposed off in terms and condition laid down in memorandum of settlement dated 04.03.2015 (as annexureI).

6. Heard counsels of parties and perused the memorandum of settlement dated 04.03.2015 (annexure – (I) and extracts of minutes (annexure – II). On perusal of memorandum of settlement and extract of minutes, both sides are agreed to revise the Transport Allowances (Hingna Allowance) at the rate of Rs. 16/- per day with effect from the date 01.02.2015 and shall remain in force till next 04 (four) years for non-executive employees of company working as R.M.C. and C.S.D. on actual attendance basis. Both management and three registered union of company agreed on memorandum of settlement (annexure –I). Memorandum of settlement is for benefit of workmen working in company. It is proper to dispose off reference in terms of memorandum of settlement dated 04.03.2015 and issue award in terms and condition laid down in memorandum of settlement as annexure-I.

ORDER

Reference is disposed off in terms and condition of settlement an award is issued accordingly. Agreed Transport Allowance (Hingna Allowance) is revised for non-executive of company working at R.M.C. and C.S.D Hingna only with effect from 01.02.2015 and shall remain in force till next 04 (four) years at the rate of Rs. 16 per day on actual attendance basis. Memorandum of settlement dated 04.03.2015 (annexure-I) shall be part of award. Party No. 1 is directed implement the award within 30 days on publication of award in Official Gazette.

Award is pronounced in open Court in presence of parties and their counsels.

CHINTA MANI TIWARI, Presiding Officer

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